86-1209

Supreme Court, U.S.
FILED
JAN 5 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

in the

SUPREME COURT OF THE UNITED STATES
October Term, 1986

SAM POLUR Petitioner,

against

THE STATE OF NEW YORK, HON. ALVIN F. KLEIN, Justice, Supreme Court State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, NEW YORK STATE SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

In this case of first impression in the State of New York, can the Sovereign, through a Justice of the Supreme Court of the State of New York, in tandem with corrupt private attorneys effectively destroy the impeccable reputation for truth, for probity, for honorable living and professional standards of Sam Polur, Petitioner herein, through the following medieval practices against the said attorney, practicing since 1963:

* imprisonment for non-summary alleged criminal contempt of Court without trial;

* conviction without accusatory instrument;

* conviction without introduction of any evidence;

* conviction without presentation of testimony;

* conviction without confrontation;

* criminal monetary fines made payable to private attorney-prosecutors;

* criminal prosecution by private litigants and not by the state;

* use of criminal process to gain civil litigation goals.

* criminal conviction exclusively through use of affidavits alone;

* criminal conviction exclusively through known use of perjurious affidavits;

* criminal jurisdiction over an accused, allegedly, without a special proceeding or use of criminal processes as required by Constitution, statute and case law; and

* judicial misconduct in particpating in all of the foregoing conduct.

Question 2. Is it not a denial of First Amendment Constitutional right to petition the Sovereign where the Courts and Judicial

Processes are effectively used to deny and pre-empt the Right to Petition for Constitutional Grievances?

Question 3. Whether subject matter jurisdiction and/or jurisdiction in personam of attorney Sam Polur was ever acquired where a special proceeding, mandated by statute, was never commenced nor was the alleged criminal contemnor ever named a party to any special proceeding.

Question 4. Can a New York State Attorney, a member of the State Bar in good standing for some 24 years, be publicly humiliated and jailed without indictment, hearing, accusation, confrontation, counsel or evidence from private lawyers seeking private gain from such criminal conviction - acting openly as Public Prosecutors without the sanction of State Constitution, statute or public policy authorizing same?

Question 5. Can a Sovereign State permit and authorize a powerful and wealthy private law-firm to manipulate the State Judiciary by acting in tendem with a Constituitonal State Supreme Court Justice in violence of the most basic and fundamental protections to Constitution, Law and Statutes?

Question 6. Can a State Criminal Contempt conviction be sustained where it was obtained through abnegation and in violence to the State's Civil Rights Law, which in material part holds: "§12. Rights of persons accused of crime -- In all criminal prosecutions, the accused has a right to a speedy and public trial, by an impartial jury, and is entitled to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor." - where not a single iota of those historic safeguards

was provided the non-accused, who was nonetheless convicted of criminal contempt, sentenced to 30 days jail, fined monies to be paid to private attorneys prosecuting the case?

Question 7. Could a criminal convicton and imprisonment thereon be authorized and permitted by a State Sovereign where the attorney who was thus imprisoned was solely alleged to have acted as a process server, serving a summons allegedly in violation of an injunction order of a State Supreme Court Justice wherein the summons used to gain the unlawful conviction was admittedly served by another lawyer to another person in another forum than that charged against Sam Polur, convicted of that alleged "Criminal Contempt."

Question 8: Can a criminal conviction of a practicing attorney with an impeccable record of service to the Bar, to the Commu-

nity,to the highest standards of the Legal Profession, be publicly pilloried and vilified on a contrivance by private attorneys seeking public monies in tandem with a State Supreme Court Justice, and nowhere on or off the Record denying a single contention that conclusively reveals that Sam Polur's conviction was unonstitutionally obtained; that his jailing was an unparalleled State action in Kafkesque, Totalitarian, Unprincipled fashion.

Question 9. What authority exists for the Appellate Division of the New York State Supreme Court, First Judicial Department to approve incarceration without trial, without confrtontation, without a scintilla of proof, by having the entire criminal conviction presented to it for review, only to have a perfunctory "conviction approved" without opinion as its judgmental overview of deadly silence.

Question 10: What authority exists for Hon. Alvin F. Klein, Nisi Prius Justice New York State Supreme Court, to peremptorily refuse to conduct a coram nobis hearing even after his attention is focused on his previous failure to assure that the accused, convicted and sentenced attorney was not given basic protections of accusatory instrument, trial, confrontation and proof beyond a reasonable doubt - and yet sentenced and jailed for non-summary alleged "Criminal Contempt" by the same Justice Alvin F. Klein.

Question 11. Can our Federal and State Constitutions tolerate powerful private Attorneys acting as Private Prosecutors for private monetary gains where no State authority exists for private litigants to assume the mantle of Public Prosecutors in Criminal contempt proceedings; especially where they submit no evidence, are the sole explicators of

the alleged facts; provide no trial, no accusatory instrument; solely, eggregiously-perjurious affidavits submitted, and thereby obtain Criminal Contempt conviction and awards of monetary "fines" to be given to such private attorneys acting as Public Prosecutors.

Question 12. Does not Double Jeopardy, pursuant to Constitutional mandate, preclude a subsequent conviction by Justice Alvin F. Klein of New York State's Supreme Court, where Justice David Saxe, of the same Supreme Court, New York State and County jurisdiction, prior to Justice Klein's ruling and order, and known to Justice Klein and the private attorneys acting as Public Prosecutors, to have ruled Sam Polur "innocent" of "Criminal Contempt" on virtually identical pleadings submitted by the same private attorneys who furnished Justice Klein with same following their earlier submission to Justice Saxe.

Question 12. Could the State of New York, through prosecution without accusatory instrument, without trial, without evidence, without testimony under oath -- all by private attorneys acting as Public Prosecutors -- "convict" attorney Sam Polur of "Criminal Contempt" without a finding of "guilty beyond a reasonable doubt," or that Sam Polur allegedly served a summons "in wilfull disobedience to a lawful mandate" as was done herein, where no such finding was made.

Question 13. Could an Attorney with an impeccable record of service to the Bar, to the Community since 1963 Admission to the Bar, who has achieved demonstrable distinction as a man, as an American, as an Attorney, in: being the sole footnoted authority in Cuyler v. Sullivan, 446 U.S. 335, 344 (1980), the case which is this Court's fundamental ruling on the imperative duties of "retained" counsel as well as "assigned" counsel was first

formulated for our Nation; who, as a private citizen achieved the addition of two years to the probation sentence against Hon. Spiro Agnew, twice Vice-President of the United States and who, effectively, had his public personna concluded through Sam Polur's private and principled opposition to his perceived pro-Arab, anti-American and anti-Israel actions in derogation of statutory mandates to register as a Foreign Agent, effectively, by suing him as a private citizen in the United States District Court for Baltimore in 1976; who is the private attorney who materially aided in convincing the United States Court of Appeals for the Fifth Circuit that Feodore Fedorenko, subsequently ordered deported by this Court to Russia as a Nazi collaborator through his role as a wartime Death Camp Guard in Treblinka, Poland - and that the United States District Court for South Florida, Roettger, J., had, effectively, usurped

the sole prerogative of the President by exercising the Dispensing Power which resides in the Executive, by "forgiving" Fedorenko for his perjury in gaining admittance to the United States in 1950; when the attorney who, for the past three years has served, voluntarily, as an Aritrator in the Small Claims part of the State's Civil Court for the City of New York [for some two years]; for a year served at night as a teacher to Sing Sing inmates in Criminal Law and Domestic Relations Law, helping organize and foster a Paralegal Program, as a volunteer; who has in his 24 years of practice as an attorney directly assisted more than one hundred persons, impoverished or otherwise in despearate straits, without seeking one dollar in fees as a matter of practice and simple morality - how could he validly be defamed for life through a contrived "Criminal Contempt" conviction, and

find he has no means of "Petitioning" the State Courts for redress; that he is left "hanging in the breeze, swaying in the breeze"!

Question 14. Does not an otherwise highly-respected member of the Bar of State and Federal Courts have de minimus rights that a functional illiterate, convicted and jailed Clarence Gideon so gloriously possesses?

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Opinions Below

The judgment of conviction rendered by the Hon. Alvin F. Klein of the New York State Supreme Court, New York County, dated June 26, 1985. The denial of appellant's petition for a writ of habeas corpus dated July 17, 1985, by the Hon. Jawn Sandifer, Justice, Supreme Court.Bronx County. The Order of the New York Court of Appeals dismissing the appeal from the denial of habeas corpus, dated November 12, 1985, by Hon. Sol Wachtler, Chief Judge. The Order of the Appellate Division, First Department, affirming the conviction, dated September 17, 1985. The Order of Justice Klein, dated June 23, 1986, denying a Writ of Error Coram Nobis. The Order of the Appellate Division, First Department denying leave to appeal Justice Klein's denial of the Writ of Error Coram Nobis, dated August

21, 1986. The Order of the Appellate Division, First Department, denying Petitioner's Motion to Reargue the denial of leave to appeal the denial of the Writ of Error Coram Nobis, dated October 7, 1986. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257.

Constitutional Provisions Involved

The following provisions of the United States Constitution are involved:

First Amendment Right to Petition the Courts for Redress of Grievances;

Sixth Amendment Rights to Trial by Jury, Confrontation of Accusers, Compulsory Process for calling Witnesses, to be Informed of the Nature and Cause of Accusation, and Assistance of Counsel;

Fifth Amendments Rights to not be subjected to Double Jeopardy, to not be deprived of his liberty and property with-

out Due Process of Law, and against Self-Incrimination;

Fourteenth Amendment Rights to not be deprived of life, liberty or property without Due Process and Equal Protection of the Law.

Jurisdiction

The Order of the Appellate Division, First Judicial Department of the Supreme Court of the State of New York denying permission to reargue petitioner's motion for leave to appeal to that Court was entered on October 7, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

Statement

On the 10th day of April, 1985, George Sassower, Esq., an Attorney qualified to practice law in the State of New York, served a summons upon Donald F. Schneider, Esq., an associate and partner in the Lawfirm of Feltman, Karesh, Major and Farbman, Esqs.

On April 11, 1985 Donald F. Schneider, Esq. filed a Notice of Motion with Affidavit in support to hold Sam Polur, Esq., your petitioner, in non-summary criminal contempt for allegedly serving the same summons served upon him [Schneider] the day before by George Sassower, Esq., allegedly in violation of an Order of New York STate Supreme Court Justice Ira Gammerman.

The summons annexed to Schneider's motion to hold Polur in non-summary criminal contempt bore the initials of one Michael J. Gerstein, Esq. with "received in court 4/10/85 M.J.G."

On May 29, 1985 Sam Polur, Esq. appeared before Hon. Alvin F. Klein, New York State Supreme Court Justice, for the purpose of representing Hyman Raffe and George Sassower, Esq., who were also being moved against for non-summary criminal contempt for alleged violations of Justice Gammerman's Order of January 23, 1985.

On May 29, 1985 there was no accusatory instrument produced, no one was present as accuser, no one was sworn to tell the truth, no testimony was taken, no evidence was introduced, no hearing was held, no trial was had, no confrontation occurred.

On June 26, 1985 Justic Klein, ex parte, issued an order and judgment finding Polur, Sassower and Raffe guilty of non-summary criminal contempt and ordered that they each serve 30 days in jail and pay fines of Two Hundred Fifty ($250.00) Dollars each to

the private attorneys who, at all material times, assumed the role of Public Prosecutors.

Sam Polur, Esq. made various vain attempts to overturn the unlawful and unconstitutional conviction and judgment by way of appeals to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, the New York State Court of Appeals, including habeas corpus petitions in the State and Federal Courts, and finally, by way of a Writ of Error Coram Nobis in the New York State Supreme Court before Hon. Alvin F. Klein, where he had sought same to be heard pursuant to statute.

Polur was denied relief by Justice Klein who peremptorily refused to entertain the petition for a Writ of Error Coram Nobis. Polur was further denied permission to appeal Justice Klein's order of denial to the Appellate

Division as aforesaid.

Polur's motion to be permitted to appeal Justice Klein's order of denial of Coram Nobis relief pursuant to Criminal Procedure Law §440.10 of the State of New York was denied on August 15, 1986.

Thereafter Polur sought reargument of the Appellate Division's denial of permission to appeal. Said application to reargue was denied without opinion of any kind at any time on October 7, 1986.

The exhaustion of State remedies requirements has been satisfied thereby.

This petitoner now seeks a Writ of Certirorari from this Court on the grounds, inter alia, that his fundamental Constitutional rights have been grievously violated herein and that he has no other recourse or avenue that would effectively clear his otherwise impeccable good name and relieve him of the

unlawful and unconstitutional judgment of conviction that tarnishes his name and dirties his lifelong reputation for probity, for honor and for integrity.

Polur was unlawfully made to serve a thirty day jail sentence for the conduct of another, and based solely on knowingly perjured affidavits of Donald F. Schneider, Esq., invited by Hon. Alvin F. Klein, to buttress his ex parte Draconian rulings which put this lawyer in jail without a pretense of a hearing or trial or safeguarding even the most elemental rights due him as a citizen and resident of the United States of America.

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ON PETITION FOR A WRIT OF CERTIORARI

TO THE APPELLATE DIVISION, FIRST JUDICIAL

DEPARTMENT, NEW YORK STATE SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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Preliminary Statement for Granting the Writ

THE COURTS OF NEW YORK STATE SURREPTITIOUSLY DEPRIVED PETITIONER OF HIS FIRST AMENDMENT RIGHT TO PETITION THE COURTS FOR CONSTITUTIONAL REDRESS OF GRIEVANCES

Initially, and throughout the period from April 1985 to the present date, there have been multiple actions by the private attorneys in tandem with Justice Alvin F. Klein and Appellate Court acquiescence, which effectively prevented your petitioner from his Constitutional right to petiton the Courts for redress of grievances.

The Constitutional right to petition the Courts would indeed be a hollow right if the right to be heard, under oath, to face your accuser(s) in a criminal action as herein, and every other fundamental safeguard included in our Bill of Rights, is not commensurate with and attendent to the Right to Petition.

It will be conclusively demonstrated hereinafter that the Constitutional right to petition the Courts has been rendered a hollow "right" where, as herein, the right to be heard has been still-born; it never achieved viable status. The Bill of Rights safeguards were wantonly abjured and stealthily withheld.

The "Right to Petition for Grievances" became and consistently remained a mere footnote to history insofar as the Court of the State of New York were concerned herein.

Reasons for Granting the Writ

Point 1

THE COURT BELOW DID NOT HAVE SUBJECT MATTER JURISDICTION DUE TO DEFENDANTS FAILURE TO PROCEED ACCORDING TO THE JURISDICTIONAL REQUIREMENTS FOR INITIATING A "SPECIAL PROCEEDING"

A petition for an order adjudicating a person guilty of criminal contempt in a civil action is a "civil special proceeding" requiring the movant-petitioner to acquire a completely new index number, independent of the underlying civil action, and styling the Notice of Petition or Order to Show Cause to reflect the exact parties involved in said special proceeding. CPLR, §§401 et seq.; Douglas v. Adel, 269 N.Y. 144,146; Bd. of Education v. Zeluck, 60 Misc.2d 1090,1093.

Donald F. Schneider, Esq., for Feltman, Karesh, Major & Farbman, Esqs., adopted the caption and title of the purported "lawful" summons, that commenced the underlying action,

to bring on what, by law, should be a Special Proceeding. That caption and title names Hyman Raffe as plaintiff and Feltman, Karesh & Major [predecessors to Feltman, Karesh, Major and Farbman,Esqs.] as defendant. This was done despite the clear language of the CPLR, §401, i.e., Petitioner v. Respondent, not Plaintiff v. Defendant. Nowhere is Sam Polur named as a party. Thus, the Notice of Motion and Motion are fatally defective jurisdictionally. Douglas v. Adel, supra; Eastern Concrete Co. v. Bricklayers, 200 App.Div. 714, 193 N.Y.S. 368; Billingsley v. Better Business Bureau of N.Y.C.,Inc., 232 App.Div. 227,228, 249 N.Y.S. 584,585 (1stDept.1931).

"...if the defect is substantial and the summons fails in its purpose, such summons is void and the court does not acquire jurisdiction. Where a summons is void, it

cannot be amended." Hyman v. Ross,84 N.Y.S. 2d 102, affd. 275 App.Div. 666, 87 N.Y.S.2d 422. See, also, CPLR 103 et al.; 401 et al; People ex rel. Clark v. Truesdell, 79 N.Y.S.2d 413.

Instructively, under the contempt statutes of the Judiciary Law, the relevant sections of the CPLR, and the due process clauses of the State and Federal Constitutions Sam Polur was entitled not only to be a "named party" to the Special Proceeding, but, was also entitled to have the special proceeding brought on in the manner prescribed by the CPLR and case law. Bd. of Education v. Zeluck, supra, at 1093-94; CPLR 103 et seq.; 401 et seq; N.Y. Const. Art.1, §6; U.S. Const. Amendments 4, 5 and 14.

"Contempt proceedings are stricti juris." Goldie v. Goldie, 77 App.Div. 12, 79 N.Y.S. 268; Stevens Plumbing Supp. v. Bi-County Plumbing, 404 N.Y.S.2d 964 (1978).

CPLR §103(b), provides in pertinent part:

> "Except where otherwise prescribed by law, procedure in special proceedings shall be the same as in actions and the provisions of the civil practice law and rules applicable to actions shall be applicable to special proceedings."

"Without a jurisdictional underpinning a judgment may not stand." Royall v. Royall, 481 N.Y.S.2d 361, 105 A.D.2d 632(1stDept. 1984). An "Order or judgment of a court lacking jurisdiction of the subject matter is void, and objection to court's jurisdiction in such case may be taken at any stage of the action, including an appeal." Marine Midland Bank, N. A. v. Bowker, 89 A.D.2d 194, 456 N.Y.S.2d 243, affd. 59 N.Y.2d 739, 450 N.E.2d 247.

In view of these substantial deviations from the law the State Courts never exercized jurisdiction, the result being an unlawful conviction of criminal contempt against this petitioner, Sam Polur, Esq.

Point 11

THE STATE COURT DID NOT POSSESS EVEN IN PERSONAM JURISDICTION OVER SAM POLUR; CONSEQUENTLY, THE CONVICTION AND IMPRISONMENT FOR "CRIMINAL CONTEMPT" WAS WRONGFUL AND UNCONSTITUTIONAL

Sam Polur was not a Named Party to the "Special Proceeding" and, as such, the Court Never Had Nor Lawfully Acquired Jurisdiction over his Person in the Action Below

The Motion and Notice of Motion filed by Donald F. Schneider, Esq., for the named defendant Feltman, Karesh & Major, Esqs., was captioned.

HYMAN RAFFE,
Plaintiff,
-against-
FELTMAN, KARESH & MAJOR,
Defendant.

As seen, the name of Sam Polur did appear anywhere in the caption or on the face of the Notice of Motion or Motion, supra.

As a person not a named party to this "special proceeding", Sam Polur was unlawfully adjudicated guilty of criminal contempt and wrongfully imprisoned.

Jurisdiction must be expressed over a "named party" to an action or proceeding, not implied over a person unnamed as a party to the proposed action or proceeding. A Court has no jurisdiction over a non-party. Aryensinger's Dept. Store, Inc. v. Shapiro Bros. Co., Inc., 115 Misc.2d 850, 454 N.Y.S. 2d 813. Personal or individual jurisdiction over a person is not acquired unless that person (1) is a party to the action or proceeding and (2) has been properly served with a summons or Notice of Petition. CPLR 103 et seq.; 401 et seq; Douglas v. Adel, supra.

Where the accused, as herein, "is not a party to the civil action or special pro-

ceeding, the contempt proceeding is an independent special proceeding." 21 N.Y.Jur.2d, §62,p.298, citing Weeks v. Coe,111 App.Div. 337, 97 N.Y.S. 704, app.den. 112 App.Div. 908, 98 N.Y.S. 1117, affd. 188 N.Y. 627, 81 N.E. 1179; see also Geller v. Flamount Realty Corp., 260 N.Y. 346, 183 N.E. 520; Steinman v. Conlon, 208 N.Y. 198,101 N.E. 863.

New York Courts have held that the failure to give proper and sufficient notice of the warning requirement for a proposed criminal contempt conviction appearing on the face of the Notice of Petition/Motion renders such Notice jurisdictionally and fatally defective. It must follow, "on principle and from analogy," Michelowski v. Ey, 4 N.Y. 2d 277,at 282, 174 N.Y.S.2d 6,at 10, that a Notice of Petition/Motion, as hereinbelow, does not name a specific person as a party to said action or special proceeding is like-

wise jurisdictionally defective in regards to the person of this petitioner, Sam Polur.

Due process commands a proceeding which seeks to punish a person for criminal contempt must be initiated by notice personally served upon the person charged. Pitt v. Davison, 37 N.Y. 235 (1867); Board of Education v. Zeluck, supra. That was not done herein.

Initially, a petition for an order adjudicating a party guilty of criminal contempt is a civil special proceeding. Douglas v. Adel, supra; here, Sam Polur was never named as a party. The vice therein was correctly assessed by Justice Hallinan in Rockefeller v. Hein, 176 Misc. 659, 28 N.Y. S.2d 266, at p.267:

> "It is settled that the court may permit amendment where there is a misnomer or some defect in the designation. ... But in the instant case, there is not merely a misnomer but a complete absence of the

name of the defendant in the summons, which, in my opinion, renders it completely defective...While there is no doubt that the party served was the defendant intended as is the person now moving specially, the failure to designate him in any manner in the summons itself is a defect so fundamental that it cannot be subsequently remedied by the court." (emphasis added)

See, also, the leading case of Bowler v. Ennis, et al., 46 App.Div. 309, 61 N.Y.S. 686, cited by the Rockefeller, supra, Court.

It is clear from the foregoing that Sam Polur was unlawfully adjudicated ex parte in criminal contempt of court where jurisdiction was never acquired over his person. [Instructively, he was merely arguing a "motion" with respect to trying to hold George Sassower, Esq., one Hyman Raffe and himself in alleged "contempt of court". (sic!) The Court never acquired jurisdiction over his person.Objection to the Court's jurisdiction in such case may be taken at any stage of the action, including on appeal. Marine Midland Bank,

N.A. v. Bowker, 89 A.D.2d 194, 456 N.Y.S. 2d 243, affd. 59 N.Y.2d 739, 463 N.Y.S.2d 441, 450 N.E.2d 247.

Point III

THE CRIMINAL CONTEMPT RULING WITHOUT HEARING OR TRIAL IS A CONSTITUTIONAL NULLITY

Preliminarily, it must be emphasized, the criminal contempt conviction herein was of a non-summary nature. No trial. No confrontation. No hearing. No testimony under oath. Not a single authoritative case in the United States subsequent to Bloom v. Illinois, 391 U.S. 194 (1967) has sustained a criminal contempt conviction without a trial or a hearing.

Absent extraordinary circumstances, procedural due process requires notice and hearing before any governmental deprivation of a significant property interest. Bodie v. Connec-

ticut, 401 U.S. 371, 379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971). The early leading case of Ex parte Bradley, 74 U.S. (7 Wall.) 864, 872-874, 19 L.Ed. 214 (1868) found the Supreme Court ruling that an attorney may not be summarily disbarred without notice and hearing, even when the disbarment results from a charge of contempt for which the Court gave the attorney notice, an opportunity to prepare, and a hearing. See, also Gamble, 307 F.2d at 781.

Due process requires that a hearing be held before one can be adjudged in contempt. Comerford v. Comerford, 49 A.D.2d 818 (1stDept. 1975); Hickland v. Hickland, 56 A.D.2d 978,979, 393 N.Y.S.2d 192,194; Crisona v. Eastern Props. 27 A.D.2d 717, 717-718, 277 N.Y.S.2d 477. Application of Gault, 387 U.S. 1, 87 S.Ct. 1428 (1967) held that a juvenile has the right to notice of charges, to counsel, to confron-

tation and cross-examination of witnesses. Surely, an attorney is entitled to no less! Here, Justice Alvin F. Klein "found" a criminal conviction for "contempt" of Court - without a trial or a hearing, absent a plea of guilt, without allocution, confrontation, any testimony under oath, or otherwise; not even a charge by the Court or an accusatory instrument of any kind! The leading case which was judicially determined some 15 years earlier, and thus well known to this experienced Justice - points up graphically and in detail what should have transpired. The unanimous Court in State University v. Denton, 35 A.D.2d 176, 316 N.Y.S.2d 297 (4th Dept.1970), luminously articulated the guiding rules which should have been followed herein. The unanimous Court stated:

> For the guidance of the court and parties in future criminal contempt proceedings arising out of civil actions, we

make the following comments: ... we are bound by decisions of the United States Supreme Court to recognize that "criminal contempt is a crime in the ordinary sense; * * * convictions for criminal contempt are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same." (Bloom v. Illinois, 391 U.S. 194,201, 88 S.Ct. 1477, 1481-1482, 20 L.Ed.2d 522.) In the words of Mr. Justice Holmes, "These contempts are infractions of the law, visited with punishment as such, if such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech." (Gompers v. United States, 233 U. S. 604,610, 34 S.Ct. 693,695, 58 L.Ed. 1115.)

In criminal contempts, as in criminal cases, the presumption of innocence obtains. Proof of guilt must be beyond reasonable doubt and the defendant may not be compelled to be a witness against himself. Gompers v. Buck's Stove & Range Co., supra. The fundamental characteristics of both are the same. (Michaelson v. United States ex rel. Chicago, St.P.M.&O.R.Co., 266 U.S. 42,66, 45 S.Ct. 18,20, 69 L.Ed. 162.) Due process of law requires that the accused should be advised of the charges against him and have a reasonable opportunity to meet them by way of defense or explanation with the assistance of counsel and the right to call witnesses. (Cooke v. United States, 267 U.S. 517,537, 45 S.Ct. 390, 69 L.Ed. 767.)

We also recognized as fundamental in a proceeding of this nature the right to be con-

fronted by the accuser and to cross-examine him. When, as here, a person charged with criminal contempt has controverted the charges through his attorney, as he is entitled to do (Peo. ex rel.Supreme Court v. Albertson, 242 App.Div. 450,453, 275 N.Y.S.361, 365), a full hearing is required at which the disputed issues of fact may be resolved. At such a hearing witnesses should be produced, rather than mere affidavits, thereby ensuring a party the right to confront and cross-examine witnesses. These rights are basic to a defendant charged with the commission of a criminal act and we see no reason why they do not appertain to one charged with criminal contempt with the same force as those rights explicitely assured by Gompers v. Buck's Stove & Range Co., supra, and Cooke v. United States, supra. (pp.302-303, 316 N.Y.S.2d)

That prescient ruling, with facts and the law to be followed virtually "on point" with the instant case, made other singularly cogent declarations. (pp.301, 316 N.Y.S.2d):

> The courts * * *may not grant an enforcement order or injunction so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law." (Regal Knitwear v. National Labor Relations Board, 324 U.S. 9,13.)
>
> "...we conclude that knowledge of a non-party alone is not sufficient without proof of agency or collusion with the named

defendants to impose liability for a violation. (Accord, Wright v. Co. School Bd. of Greensville Co., Va., D.C., 309 F. Supp. 671; Briddon v. Briddon, supra; Rigas v. Livingston, supra; 7A Weinstein-Korn-Miller, N.Y.Civ.Prac.par. 6301.25.) Both Rigas and Briddon, supra, involved notice of the existence of the injunction on the part of the person charged with contempt, but the orders of contempt, nonetheless, were overtruned.

Instructively, in the case, Id., the defendants, members of the faculty of state university branch, were found in criminal contempt at a Special Term proceeding, as herein, where they were not parties to disruptive actions. They were not charged with acting in concert with or as agents named in the preliminary injunction. Faculty members therefore could not be held in contempt for their independent actions, even if they had knowledge of the injunction provisions. The Fourth Department ruling in 1970 was prescient. It unerringly set down the law to be followed where the facts meshed so unerringly.

Both State law and statutory mandate compel inexorably that a proposed contempt should be adjudicated at a plenary hearing with due process of law including notice, written charges, confrontation, assistance of counsel, compulsory process for production of evidence and opportunity of the accused to confront witnesses against him. Zols v. Lakritz, 74 Misc.2d 322, 344 N.Y.S.2d 626 (1973). When a lawyer, as herein, may be subject to a criminal contempt order and possible imprisonment, he is entitled to a full evidentiary hearing. Matter of Passonno v. Passonno, 43 A.D.2d 773, 350 N.Y.S.2d 771; Shkolnik v. Shkolnik, 41 A.D.2d 523, 340 N.Y.S.2d 70. Since the record herein reveals that petitioner was not advised of this fundamental right - that the Justice, Hon. Alvin F. Klein, merely handed down a ruling after a mere oral "argument" on a

Special Term motion, with no "charges" ever having been lodged against your petitioner - the order adjudging him in criminal contempt must be reversed. Bruno v. Bruno, 50 A.D.2d 701, 375 N.Y.S.2d 442 (3rd Dept. 1975); Ingraham v. Maurer, 39 A.D.2d 258, 334 N.Y.S.2d 19; King v. Barnes, 113 N.Y. 476, 21 N.E. 182. Denial of a hearing at which full proof should have been had and at which the moving party does not have the burden of proof is not due process. Singer v. Singer, 52 A.D.2d 774, 382 N.Y.S.2d 793; Penn-Dixie Industries, Inc. v. Castle, 77 A.D.2d 844, 431 N.Y.S.2d 34 (1stDept.1980). See, also, Pereira v. Pereira, 35 N.Y.2d 148, 319 N.E.2d 413.

Due process requires that an evidentiary hearing be held to resolve the disputed conflicts before one can be adjudged in criminal, or even civil contempt. Barreca v. Barreca, 77 A.D.2d 793, 430 N.Y.S.2d 739

(4thDept.1980). The Constitution requires "an opportunity * * * (be) granted at a meaningful time and in a meaningful manner," Armstrong v. Manzo, 380 U.S.545,552, 85 S.Ct. 1187,1191 (1965), "for [a] hearing appropriate to the nature of the case," Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652,657 (1950). A state must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause. Id., 70 S.Ct., at 659.

It is not new or novel law that absent a plea of guilty, as herein, pursuant to ministerial constitutional compulsion, all courts adhering to the Constitution of the United States or New York State are without jurisdictional empowerment to convict, sentence and imprison for non-summary criminal contempt. The Sixth Amendment prohibits

through its confrontation clause the jailing of your petitioner herein, Pointer v. Texas, 380 U.S. 400, much less the "finding" (sic!) of criminal contempt.

This Court, in In re Savin, 131 U.S. 267, 33 L.Ed. 150, 9 Sup.Ct.Rep. 699, applied the rule to proceedings for contempt:

> Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. We think this includes the right to assistance of counsel, if requested, and the right to call witnesses to give testimony, and either relevant to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed. See Hollingsworth v. Duane, Wall.Sr.77, Fed.Cas.No.6,616; Re Stewart, 118 La. 827, 43 So. 455; Re Clark, 208 Mo. 121, 106 S.W. 990.

And as the Supreme Court ruled in Cooke v. United States, 267 U.S. 517 (1924): "When the contempt is not in open court, however, there is no such right or reason in dispensing with the necessity of charges and the opportunity of the accused to present his defense

by witnesses and argument." (267 U.S., at 536) This Court further spoke to the precise issue herein [this lawyer is found guilty of "criminal contempt" solely based on perjurious and fraudulent affidavit. The affidavit referred to April 10, 1985 summons served in Court allegedly on Schneider; but in truth the summons submitted as exhibit reveals it was "received" by attorney Gerstein! Again, it is nowhere alleged that Sam Polur served that summons on Gerstein. But it is admitted by George Sassower that he served it on Gerstein in Court on April 10, 1985.] In Cooke, supra, that attorney had written an "inflamatory letter" to the Judge. He was exonerated by this Court. The rule is "on point" herein (267 U.S., at 538). This Court was surely writing for the Ages!:

> The court proceeded on the theory that admission that the petitioner had written the letter foreclosed evidence or argument. In cases like this, where the intention with which acts of contempt have been committed must necessarily and properly have

> an import bearing on the degree of guilt and the penalty which should be imposed, the court cannot exclude evidence in mitigation. IT IS A PROPER PART OF THE DEFENSE. There was a suggestion in one of the remarks of the petitioner to the court that while he had dictated the letter he had not read it carefully, and that he had trusted to the advice of his partner in sending it; but he was not given a chance to call witnesses or to make a full statement on ths point. (emphasis all added)

Here, petitioner was unable to confront anyone. There was no hearing under oath. There was, in fact, no testimony whatsoever. No evidence was introduced. There was no confrontation of the accuser. In fact and in truth the summons on April 10, 1985 was served by Sassower on Gerstein, not by Polur on Schneider.

Instructively, Schneider never asserted, much less produced, anything to the contrary! He submitted to the Court as an "Exhibit" the summons served on Gerstein by Sassower, falsely alleging Sam Polur had served him [Schneider] with that summons. All of these facts took months to adduce! Petitioner was unaware of the duplicity and fraud committed upon him, except to know he was not guilty of any wrongdoing.

In a comparable issue, Constantineua infra, also punished by the lower Court, this Tribunal found the "procedure pursued was unfair and oppressive to the petitioner." Surely, that should be the finding herein as a matter of fact, as a matter of law, as a matter of Equity, as a matter of the rightness of things.

The Supreme Court in Wisconsin v. Constantineua, 400 U.S. 433, 91 S.Ct.507, 519 stated it eloquently:

> ...where the State attaches a "badge of infamy to the citizen, due process comes into play, Wieman v. Updegraff, 344 U.S. 183,191 ... "[T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." Anti-Fascist Committee v. McGrath, 341 U.S. 123,168, 95 L.Ed. 817,852, 71 S.Ct. 624 (Frakfurter,J. concurring).
>
> Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. ... This appellee was not afforded a chance to defend herself. Only when the whole proceedings leading to the pinning of an unsavory label on

> a person are aired can oppressive results be prevented.

There could have been no greater "badge of infamy" herein than a "finding" (sic!) of criminal contempt of Court, followed by front page publication in the official legal newspaper, The New York Law Journal, with attorney Schneider's personal comments explicating the alleged necessity and validity of the finding of "criminal contempt", also on the front page for having provided that "scoop" to the publication.

In re Oliver, 333 U.S. 257, at 273 (1947) spoke to the effectively secret proceedings herein: "A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense -- a right to his day in court -- are basic to our system of jurisprudence; and these rights include, as a minimum, a right to examine the

witnesses against him, to offer testimony and to be represented by counsel." See, also, Powell v. Alabama, 287 U.S. 45,68-70; Snyder v. Massachusets, 291 U.S. 97,116; Hovey v. Elliott, 167 U.S. 409, 418; Holden v. Hardy, 169 U.S. 366, 390-391; Morgan v. United States, 304 U.S. 1,14-15.

In re Rosahn, 671 F.2d 690, 697 (2d Cir.1982), also sets down the correct rule to be followed herein:

> This Court has approved the general principles set out in Alter, which held that it was not enough that the judge considered the parties' affidavits, oral argument and offers for the record; the witness was entitled to an "uninhibited adversary hearing" at which "at the very least ... [he must] be allowed to probe all nonfrivolous defenses ..." 482 F.2d, at p. 1024. See In re Sadin, 509 F.2d 1252, 1255 (2dCir.1975). More specifically, we have held that before a witness is imprisoned under §1826(a), he must receive notice of the charge against him and the facts upon which it is based, and time to prepare a defense. Id. (emphasis added)

See, also, Taylor v. Hayes, 418 U.S. 488;

Groppie v. Leslie, 404 U.S. 496,506, 30 L.Ed.2d 632; ABA Standards for Criminal Justice 20; Weiss v. Burr, 484 F.2d 973,986; Cammer v. United STates, 350 U.S. 399 (1956); Michaelson v. United States, 266 U.S. 42,66-67 (1924).

Point lV

THE SAXE, J. ORDER WAS A FINAL DETERMINATION AS TO PETITIONER

The motion to hold petitioner in contempt for serving the summons, allegedly, in question herein was impermissibly twice made - and twice ruled on: First to Justice David Saxe. Second to Justice Alvin F. Klein. The same alleged facts as to petitioner were put in issue, but the private attorneys, Feltman, Karesh, Major,Esqs., acting as Public Prosecutors in the Klein motion, in slippery fashion never focused attention of the second Court on the identical relief being sought before

him had already been submitted to the first Court. Justice Saxe ruled on the same matter prior to the ruling by Justice Klein. This was known to the private attorneys acting as Public Prosecutors. This was known to Justice Klein. The case as to petitioner was resolved by an explicit finding of "not guilty" before the "Criminal Contempt" conviction issued. As such, the first determination by Justice Saxe, ruling that attorney Polur was not to be held in contempt of Court - estopped Feltman, , Karesh, Major, Esqs. from re-litigating that issue. The subsequent ex parte "finding" of "Criminal Contempt" by Justice Klein is thereby a nullity on the grounds of res judicata, collateral estoppel. The ruling constituted Double Jeopardy in violation of Constitutional prohibition.

Point V

NO PROOF "BEYOND A REASONABLE DOUBT" WAS FOUND OR RULED UPON BY THE NISI PRIUS COURT, THUS CREATING A JURISDICTIONAL LACUNA IN THE "CRIMINAL CONTEMPT" "FINDING"

It is Hornbook Law that criminal contempt requires proof beyond a reasonable doubt that a party wilfully violated a court order. Powell v. Clauss, 93 A.D.2d 883, 461 N.Y.S. 2d 413 (2dDept.1983); Yorktown Central School District v. Y.C.T., 42 A.D.2d 422, 348 N.Y. S.2d 367,372 (2dDept.1973). Evidence necessary to find the accused in criminal contempt is beyond a reasonable doubt, in that it is an offense against the court's authority. King v. Barnes, 113 N.Y. 476, 21 N.E. 182. The People were required to prove petitioner's guilt beyond that reasonable doubt. People v. Shapolsky, 8 A.D.2d 122,125, 185 N.Y.S.2d 639,642; People ex rel. Valenti v. McCloskey,

8 A.D.2d 74,83, 185 N.Y.S.2d 952,961-962; Matter of Wegman's Sons, 40 App.Div. 632, 633, 57 N.Y.S. 987,988-989; Michaelson v. United States, 266 U.S. 42,66, 45 S.Ct. 18, 20, 69 L.Ed. 162. Here, the People of the State of New York never even appeared in the case. It was solely private attorneys, openly and blatantly seeking private gain. [Fines imposed were to be paid to them as private attorneys!]

But criminal contempt is a crime. United States v. Williams, 622 F.2d 830 (5thCir.1980), cert.den., 449 U.S. 1127, 101 S.Ct. 946, 67 L.Ed.2d 114 (1981. As such, the requisite standard of proof is "beyond a reasonable doubt." Matter of Reehlman, M.D., 763 F.2d 670,671 (1985). See, also, Bloom v. Illinois, 391 U.S. 194, 198, 88 S.Ct. 1477,1480, 20 L.Ed.2d 522

(1968); Gompers v. Buck Stove & Range Co., 221 U.S. 418,446, 31 S.Ct. 492,500, 55 L. Ed. 797; Matter of Edward Joyce, 506 F.2d 373 (5thCir.1975). The Supreme Court in, In re Winship, 397 U.S. 357, 90 S.Ct. 1068, at 1073, explicitely set forth the Constitutional import to be accorded this standard of proof:

> Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard - we explicitely hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

Hereinbelow, the Court should have perhaps re-read the memorable words found in Brady v. Maryland, 373 U.S. 83 (1963), at p. 87:

> Society wins not only when the guilty ones are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition

> candidly for the federal domain: "The United States wins its point whenever jsutice is done its citizens in our courts."

Hereinbelow, naked Judicial Power was asserted without the opportunity to rebut, to explain, to disclose, to explicate anything. No testimony under oath was taken. The New York State Supreme Court Justice herein merely heard oral argument on a motion. No one was under oath. No one testified subject to cross-examiation and penalties of perjury. No jury trial was permitted. No trial was held. No hearing under oath subject to CPLR 2106 and penalties of perjury was had. There was merely an oral argument on submitted affidavits alone - followed by Draconian "findings" of "Criminal Contempt" - not even in the presence of the Court. All followed by public shame and abuse, by obloguy, by imprisonement for a 30-day term, by professional abjuration, by public dishonor.

Point VI

NO ALLEGATION APPEARS IN THE ORDER THAT DISOBEDIENCE OF A "LAWFUL MANDATE" PURSUANT TO JUDICIARY LAW §750(A)(3)(4) OCCURRED

Power of the Courts to punish for criminal contempt existed at common law. People ex rel. Stearns v. Marr, 94 N.Y.S. 965 (1903). It is now conferred by statute. Judiciary Law §750; Penal Law §215.50 in New York State. A court of record has general power to punish a person for a contempt where he is guilty in respect of such court of any of the acts declared by statute to be contempts. Gold v. Menna, 25 N.Y.2d 475, 307 N.Y.S.2d 33, and no others. Baumgartner v. Baumgartner, 273 App.Div. 411, 77 N.Y.S.2d 668. The power to punish for criminal contempt cannot be extended in the least degree beyond the limits imposed by statute. People ex rel. Clarke v. Truesdell, 79 N.Y.S.2d 314 (1948).

Herein, significantly, nowhere in the Order of Justice Klein does it contain the statement that it was a "lawful" Order or

Mandate of the Court that was allegedly disobeyed. Such omission is jurisdictional. Id. See, also, Pawolski v. Schenectady, 217 N.Y. 117 (1916), where the Court of Appeals ruled the power of a court to punish for criminal contempt should not be exercised unless the acts constituting the contempt are clearly proved to be wilfully disobedient to the lawful mandate of a court. Where, as here, the terms of an Order are vague and indefinite as to petitioner, State v. Unique Ideas, 44 N.Y.2d 345, 405 N.Y.S.2d 656, your petitioner may not be adjudged in criminal contempt for wilfull failure to "obey." Intent is a necessary element in criminal contempt. People ex rel. Bernstein v. LaFetra, 171 App.Div. 269,275, 157 N.Y.S. 386,390; Matter of Rotwein, 291 N.Y. 116,122, 51 N.E.2d 669,672.

There was no mandate of commitment herein, only the order "finding" "criminal

contempt." So "intent" could not therein be determined. There was no hearing. There was no testimony under oath. There was no confrontation pursuant to Constitutional mandate. There was no allocution. There was no submission other than an affidavit this petitioner has characterized as being materially false. Finally, there can be no "contempt" if the alleged disobedience was a result of misunderstanding or mistake - or, as herein, simply the act of a messenger or a process server as a favor for a lawyer-colleague. The petitioner's rights in the premises were totally abjured and violated. There could be no confrontation of witness(es) against him. None existed as to any criminal act. [See, e.g.,the landmark ruling in Davis v. Alaska, 415 U.S. 308, 94 S.Ct.1105, 39 L.Ed.2d 347.]

The necessity of there first being a "valid" and "lawful" mandate before contempt will lie for failure to obey it can be imposed, was effectively stated in Spector v. Allen, 281 N.Y. 258, 22 N.E.2d 864(1939). The issue concerned whether a valid mandate of the court issued to a prospective witness before a grand jury. The Court's language is instructive(pp.259 and 260 of 281 N.Y.):

> Punishment for a criminal contempt is a drastic remedy for wilfull wrong. The mandate must be clear before disobedience can subject a person to such punishment.
>
> The defect here is not purely formal or technical. To protect the liberty of the individual from possible abuse of power, punishment for contempt is hedged about with restrictions and subject to regulations imposed by the Legislature.
>
> Disobedience only of mandates of the court given in accordance with law are subject to such punishment. The command must be clear; disobedience must be wilfull. (emphasis added)

See, also, Saal v. South B.R.Co., 122 App.Div.

364, 106 N.Y.S. 996 (1907); People v. Balt, 34 A.D.2d 932, 312 N.Y.S.2d 587 (1st Dept. 1970); Sheridan v. Kennedy, 12 A.D.2d 332, 212 N.Y.S.2d 296.

This Court's ruling in Donovan v. City of Dallas,377 U.S. 408, 84 S.Ct. 1579 (1964) is "on point". At page 1583 of 84 S.Ct. the following lucid rule is enunciated:

> It is argued here, however, that the Court of Civil Appeals' judgment of contempt should nevertheless be upheld on the premise that it was petitioners' duty to obey the restraining order whether that order was valid or invalid.
>
> The Court of Civil Appeals did not consider or pass upon this question, but acted on the assumption that petitioners were guilty of "wilful disobedience of a valid order." 368 S.W.2d at 244 (emphasis supplied)
>
> Since we hold the order restraining petitioners from prosecuting their case in the federal courts was not valid, but was invalid, petitioners have been punished for disobeying an invalid order. (emphasis added)

Of course, that very issue was not resolved or even considered in the case at bar. By

not providing petitioner basic due process, basic equal protection of the laws and the related fundamental rights - e.g., not having a charge uttered by the Court, no testimony under oath, no confrontation of accuser(s) by petitioner, inter alia, there was no forum available to prove the falsity of the contentions, to plead "not guilty" to a formal charge, to reveal and prove that no "lawful mandate" of any Court was even stated to have been violated.

Point V11

THE STATE COURT ABUSED ITS DISCRETION BY HOLDING PETITIONER IN CONTEMPT BECAUSE OF LACK OF A FACTUAL BASIS

Instructively, the only act arguably charged as against petitioner is alleged service of a single summons on April 10, 1985. Yet, the only"evidence" of same was a totally distinct proof of service of a distinct and different summons on one Michael J. Gerstein, Esq., marked "received in court 4/10/85. M.J.G." It is nowhere alleged that Sam Polur had served Gerstein with that summons. Nonetheless, petitioner went to jail for allegedly serving that summons on Donald F. Schneider, Esq! And that summons was submitted by Schneider as a Court exhibit to have attorney Sam Polur convicted and incarcerated. Because there was no hearing, no testimony under oath, no trial - it proved impossible to controvert or explain anything.

Such, standing alone, is insufficient to create a Draconian "Criminal Contempt" of Court.

Apparently, Justice Klein of the New York State Supreme Court was not aware that a hearing with testimony under oath, with confrontation of his accuser(s) obtainable to the accused, with the necessity of an accusatory instrument presented to such "defendant" (sic!). Quantum Heating Services v. Austern, 100 A.D.2d 843, 474 N.Y.S.2d 81; Judiciary Law, §772; CPLR 2218. Surely, it is even more imperative in a criminal contempt proceeding. A hearing would have readily adduced the total paucity of the charges by private attorneys - especially where they wrote the ORDER for the Justice awarding to them as private attorneys monetary gains which could only be paid to the Sovereign!

Incredibly, the "Criminal Contempt" Order came down "on the sly." This petitioner reasonbly beleived the Court would,

pursuant to Due Process and Equal Protection of the Laws as Constitutional mandates, at worst merely "find" that there was a basis presented for holding of a hearing or trial as to whether criminal contempt would lie! There was no statutory or Constituional premise for the, effective Star Chamber ruling and "finding" (sic) which came down.

Point V111

MULTIPLE FINES ORDERED PAID TO PRIVATE LAWYERS PURSUANT TO JUSTICE KLEIN'S CRIMINAL CONTEMPT ORDER IS AN UNCONSTITUTIONAL RULING

The Order filed by Justice Klein on July 1, 1985 cannot be sustained as a "criminal contempt" against petitioner. Multiple fines are therein ordered to be paid by the alleged contemnors to private attorneys

who drew up and submitted the Order, to wit, Feltman, Karesh & Major, P.C. "In such case the punishment is imposed to vindicate the dignity of the court, and in the interest of public justice, and not for the benefit of the party. The fine belongs to the public, and not to the moving party..." (emphasis added) Mutual Milk & Cream Co. v. Tietjen, 73 App.Div. 287,290 (1st Dept.1902). See, also, Boon v. McGucken, 67 Hun,251, 22 N.Y. S. 424; People v. Gilmore, 88 N.Y. 628; Judiciary Law, §751.

A criminal contempt is for wilfull disobedience to a lawful mandate of the Court (Judiciary Law,§750). That was nowhere alleged in the Order.

As succinctly stated in Re City of Corning, 162 N.Y.S.2d 687,691 (Sup.Steuben Co.1957): "A criminal contempt is an offense against the PEOPLE of the State and a fine

is imposed which goes into the public treasury..." (emphasis added)

Contempt statutes are a limitation on the power of the Court to punish for contempt and should therefore be strictly construed ("strictissimi juris"). Dollard v. Koronsky, 199 N.Y. 558 (1910); Re Young, 29 Misc.2d 817, 211 N.Y.S.2d 621; Bridgman v. American Book Co., 12 Misc.2d 63, 173 N.Y.S.2d 502 (1958). And strict construction is generally in favor of the accused. Wolf v. Hubbard, 191 Misc. 647, 78 N.Y.S.2d 671 (1948). That rule, it is respectfully urged, must be applied herein.

Point IX

A JURY TRIAL SHOULD HAVE BEEN ORDERED AS A MATTER OF MINISTERIAL CONSTITUTIONAL COMPULSION BEFORE CONVICTION, SENTENCING, IMPRISONMENT COULD BE ACHIEVED AS HEREIN WITH RESPECT TO PETITIONER SAM POLUR

Inasmuch as the "Criminal Contempt" conviction herein is considered a "serious crime" (Judiary Law §90[4][d]), 22 NYCRR §603.12[c], a jury trial was mandated despite incarceration of less than six (6) months. Bloom v. Illinois, 391 U.S. 194 (1968). The language of this Court in this leading case is instructive:

> Our deliberations have convinced us, however, that serious contempts are so nearly like other serious crimes that they are subject to the jury trial provisions of the Constitution, now binding on the States. ... dispensing with the jury in the trial of contempts subjected to severe punishment represents an unacceptable construction of the Constitution, "an unconstitutional assumption of powers by the [courts] which no lapse of time or respectable

array of opinion should make us hesitate to correct." Black & White Taxicab & Transfer Co. v. Brown & Yellow Cab & Transfer Co., 276 U.S. 518, 533 (1928) (Holmes,J., dissenting). (p.198

The Constitution guarantees the right to jury trial in state court prosecutions for contempt just as it does for other crimes. (p.200)

Criminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both (p.201)

Indeed, in contempt cases an even more compelling argument can be made for providing a right to jury trial as a protection against the arbitrary exercise of official power. Contemptuous conduct, though a public wrong, often strikes at the most vulnerable and human qualities of a judge's temperament. (p.202)

Our experience teaches that convictions for criminal contempt, not infrequently resulting in extremely serious penalties, see United States v. Barnett, 376 U.S. 681, 751 (Goldberg, J., dissenting), are indistinguishable from those obtained under ordinary criminal laws. If the right to jury trial is a fundamental matter in other criminal cases, which we think it is, it must also be extended to contempt cases. (pp.208-209) (all emphasis, supra, added)

And, at the same Court Term, this Court in Duncan v. Louisiana,391 U.S. 145 (1968)

memorably added to the fundamental rulings enunciated in Bloom, Id.:

> Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. (p.156)
>
> Our conclusion is that in the American States, as in the federal juridical system, a general grant of jury trial for serious offenses is a fundamental right, essential for preventing miscarriages of justice and for assuring that fair trials are provided for all defendants. (p.158)

In the case at Bar, clearly the Justice forgot the profound teachings of this Tribunal in Bloom, supra, and in Duncan, Id. Not only was there no hearing, no trial, no right to compulsory process for witnesses, no right to confront accuser(s), no right to a speedy and public trial, no right to have testimony under oath and subject to cross-examination, but the "finding of Criminal Contempt" was merely an arbitrary

ruling and conviction pursuant to which your petitioner was sentenced to and served time in jail. See, also, Pitt v. Davidson, 37 N.Y. 235 (1867), based on the "well settled principle of the common law, that no person shall be condemned unheard." That was done herein!

Point X

THE CONSTITUTIONAL PROHIBITION AGAINST DOUBLE JEOPARDY WAS VIOLATED BY JUSTICE KLEIN WHO KNEW OR SHOULD HAVE KNOWN OF THE PRIOR ACQUITTAL BY ACTING JUSTICE SAXE OF THE SAME ALLEGED ACT BY SAM POLUR OF SERVING A SUMMONS IN ALLEGED VIOLATION OF A THIRD JUSTICE'S ALLEGED RULING THEREIN

On or about May 9, 1985 Acting Supreme Court Justice David B. Saxe exonerated petitioner of a criminal contempt of court for having allegedly violated the "Order of the permanent injunction of the Honorable Ira Gammerman dated January 23, 1985" by service

of a summons upon Feltman, Karesh & Major, on April 1, 1985.

P.C./ That finding was succinctly stated:

"ORDERED, that defendant's motion to punish Sam Polur for a criminal contempt is denied."

(emphasis added)

On or about June 6, 1985 Justice Alvin F. Klein, absent an accuser under oath, one subject to cross-examination and penalties of perjury, without a hearing or trial or testimony under oath, with the right to allocution and the right to be confronted by a sworn accuser, each denied [see, e.g., Matter of Katz v. Murtagh, 28 N.Y.2d 234, 238, 321 N.Y.S.2d 104, 269 N.E.2d 816], ruled petitioner should be convicted of criminal contempt, sentenced, imprisoned and fined. The Order of Justice Klein was entered in the Clerk's Office for New York County on July 1, 1985 moments after that of Acting Supreme Court Justice Saxe's Order of Exo-

neration.

The non-summary criminal contempt, thus, was founded on mere submitted affidavits. The accused therein, your petitioner, was not afforded the right to a trial for the "serious crime" as found by this Court in Bloom, supra. No information or indictment was obtained. He lost his rights to testify under oath, to have his accusers testify subject to CPLR 2106 and penalties of perjury, to confront his accuser(s) and the right to a decision rendered by an impartial fact finder. He was clearly the victim of Double Jeopardy prohibitions of Federal and State Constitutions, rendering everything which occurred against petitioner illegal and unconstitutional. Sam Polur, admittedly, served one summons only on April 1, 1985. Justice Saxe found him innocent of any wrongdoing.

Point XI

NO CONSTITUTIONAL OR STATUTORY AUTHORITY EXISTS TO HAVE NAMED PRIVATE ATTORNEYS AS THE SOLE PROSECUTORS IN THIS CRIMINAL CONTEMPT PROCEEDING

In Polo Fashions v. Stock Buyers Int'l, Inc., 760 F.2d 698 (6thCir.1985), Chief Judge Lively, speaking for the Unanimous Court, spoke directly to the issues herein. In Polo, Id., defendants asserted that absent any supervision or control by the United States Attorney's Office, prosecution of a criminal contempt action by counsel for a party in the underlying civil litigation constitutes a denial of due process. The Court memorably ruled:

> We conclude that it was an abuse of discretion for the district court to appoint attorneys for Polo to conduct the criminal contempt proceedings. These attorneys could assist the United States Attorney or an assistant, but could not proceed alone. ... The deve-

lopement of safeguards for defendants in criminal contempt proceedings, particularly with respect to the rights to trial by jury, was reviewed in Bloom v. Illinois, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968).

...

One of these procedural protections is the requirement that criminal actions be prosecuted by disinterested, publicly employed attorneys. A private attorney employed to represent a client does not operate under the same restraints as a public prosecutor. Aside from his ethical obligations a privately employed attorney has the single permissible objective of forwarding his client's interests. [emphasis added]

A public prosecutor, on the other hand, must consider the public interest which lies as much in seeing justice done in every case as in the successful prosecution of any particular case. The role of federal prosecutor was eloquently described by the Supreme Court in Berger v. United States, 295 U.S. 78,88, 55 S.Ct. 629,633, 79 L.Ed. 1314 (1935):

"The United States Attorney is the representive not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such,

he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilty shall not escape or innocence suffer." [all above p.704 of 760 F.2d]

The Court wrote incisively of the fundamental distinction between the private and the public prosecutor:

It is too much to expect an attorney committed to his client and the client's cause to recognize the "twofold aim" referred to in Berger when acting as prosecutor in proceedings which, if successful, can benefit immeasurably that client and his cause.

We recognize that federal prosecutors occasionally overlook their twofold obligation and become too concerned with obtaining convictions. However, this overzealousness does not have its roots in a conflict of interest. ... This is quite different from approving a practice which would permit the appointment of prosecutors whose undivided loyalty is pledged to a party interested only in a conviction. [all above emphasis added]

It is respectfully urged there is no statutory law authorizing Private Prosecutors in the State of New York.

The actions herein are a brazen usurpation, a naked wresting of power re-

siding exclusively in the Sovereign, in the People of the State of New York. This entire proceeding - from its unlawful inception to the present day, is unconstitutional. We pray this Supreme Court of the United States find so at this time.

The classic formulation cited in Berger, supra, was abjured and emasculated by the Private Prosecutor herein: The self-serving Order he drafted, crassly mandated payment of "fines" (sic!) to a private lawfirm. No statement is found that a "lawful mandate" was violated. Double Jeopardy in violence to Constitution and fundamental rights was achieved and manipulated out of focus. The private attorneys, qua Public Prosecutors, failed to focus attention to the Court on the prior contrary ruling of "not guilty" by

Saxe, J. on the same basic facts and issures subsequently ruled on by Klein, J. Other egregious omissions and commissions of the fundamental import in law and in equity are cited throughout this petition.

Conclusion

1. The Court should find that private attorneys seeking private profits from a "Criminal Contempt" conviction violate the Constitution of the State and Federal Sovereigns.

2. Double Jeopardy and Collateral Estoppel should be found because Acting Supreme Court Justice David B. Saxe first found Sam Polur "Not Guilty" of Criminal Contempt; thereafter on the same basic facts and issues Justice Alvin F. Klein found Sam Polur "Guilty" of "Criminal Contempt."

3. A Criminal Contempt ruling without a hearing or trial is a Constitutional nullity.

4. No proof beyond a reasonable doubt was found or ruled upon by Justice Klein, thus creating a jurisdictional lacuna in the "Criminal Contempt" Conviction merely based on a motion "argument." (sic!)

5. There was a failure to allege disobedience to a "lawful mandate" pursuant to Judiciary Law §750(A)(3)(4), a fatal omission.

6. No factual basis existed for holding petitioner in criminal contempt without even a semblance of proving "intent" or any other required male fide, indispensible for criminal conviction of a "serious crime" as herein.

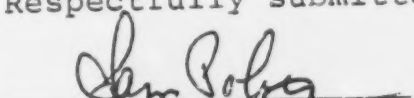
7. A jury trial should have been accorded to petitioner as a matter of ministerial Constitutional compulsion before conviction, sentencing, imprisonment could be achieved herein with respect to the petitioner.

8. Failure to have brought on the criminal conviction proceeding without

adherence to New York State's Civil Practice Law and Rules, Criminal Procedure Law, related Statutes and Federal and State Constitutional mandates for Equal Protection of the Law and Due Process of Law, made such "finding" as herein inimical to fundamental fair play and one that should now be reversed and stricken pursuant to Law and Equity.

The petition for a writ of certiorari should be granted, and the Court thereafter grant all other further and different relief it deems just and appropriate in the premises.

Respectfully submitted,



Sam Polur
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Tel: (212) 402-6497

DATED: January 10, 1987.

86-1209

Supreme Court, U.S.
FILED
JAN 5 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO.

APPENDIX FOR PETITIONER

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1986

SAM POLUR,

Petitioner,

- against -

THE STATE OF NEW YORK, HON. ALVIN F. KLEIN, Justice, Supreme Court State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERITORARI

TO THE APPELLATE DIVISION, FIRST

JUDICIAL DEPARTMENT, NEW YORK STATE

SUPREME COURT

APPENDIX FOR PETITIONER

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No._____

APPENDIX FOR PETITIONER

IN THE

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Respondents.

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At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on October 7, 1986

Present -- Hon. Leonard H. Sandler, Justice Presiding

Arnold L. Fein
Ernst H. Rosenberger
Betty Weinberg Ellerin
Richard W. Wallach, Justices

HYMAN RAFFE,

Plaintiff,

- against -

XAVIER C. RICCOBONO, DONALD DIAMOND FELTMAN, KARESH & MAJOR, ESQS. and KREINDLER & RELKIN, P.C.,

Defendants.

M-4304

HYMAN RAFFE,

Plaintiff,

- against -

KREINDLER & RELKIN, P.C., HON. WALTER M. SHACKMAN, "JOHN DOE", and JOHN ROE," names fictitious, persons intended to be those who communicated with the Court ex parte,

Defendants.

HYMAN RAFFE,

Plaintiff,

- against -

DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, ESQ., KREINDLER & RELKIN, P.C., CITIBANK, N.A., and JEROME H. BARR, ESQ., individually and as Executor of the Will of Milton Kaufman,

Defendants.

[M-4304]

A motion having been made by Sam Polur, Esq., for reargument of the order of this Court [M-3667/M-3786] entered on August 21, 1986,

Now, upon reading and filing the papers with respect to said motion; and due deliberation having been had thereon,

It is ordered that said motion be and the same hereby is denied, with $20 costs.

ENTER:

HAROLD J. REYNOLDS
Clerk.

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION:FIRST JUDICIAL DEPARTMENT

HYMAN RAFFE,

Plaintiff,

- v -

XAVIER RICCOBONO, DONALD DIAMOND, FELTMAN KARESH & MAJOR, ESQS., and KREINDLER & RELKIN, P.C.,

Defendants.

Index No.9522/85
(New York County)
M-3367; 3786
(First Department)

HYMAN RAFFE,

Plaintiff,

- v -

KREINDLER & RELKIN, P.C., HON WALTER W. SHACKMAN, "JOHN DOE" and "JOHN ROE", names fictitious, PERSONS INTENDED TO BE THOSE WHO COMMUNICATED WITH THE COURT EX PARTE,

Defendants.

NOTICE OF MOTION

HYMAN RAFFE,

Plaintiff,

- v -

DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, ESQ., CITIBANK, N.A., and JEROME H. BARR, ESQ. Individually and as EXECUTOR OF THE WILL OF MILTON KAUFMAN,

Defendants.

PLEASE TAKE NOTICE, that upon the order entered herein on the 21st day of August, 1986 denying the motion for Leave to Appeal denial of a Coram Nobis,C.P.L. 440.10, Petition and upon the papers on which said order was granted and upon the annexed Motion and Affirmation of SAM POLUR, Esq., Attorney Pro Se, a motion will be made at a Motion Term of this Court to be held in and for the Supreme Court of the Appellate Division, First Judicial Department at the Courthouse thereof located at 27 Madison Avenue, New York, New York on the 25th day of September, 1986 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel, Pro Se can be heard for leave to reargue the said motion to have this Court issue a Certificate granting Leave to Appeal the denial of an application for Coram Nobis relief, CPL §440.10, and in the event such leave is granted that such reargument then and there proceed and for such other further and different relief as to the Court may seem just

and proper in the premises.

Dated: September 12, 1986.

SAM POLUR
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Pro Se
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(212) 402-6497

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION:FIRST JUDICIAL DEPARTMENT

HYMAN RAFFE,

Index No. 9522/85

Plaintiff, (New York County)
M-3367; 3786
- v - (First Department)

XAVIER RICCOBONO, DONALD DIAMOND, FELTMAN, KARESH & MAJOR, ESQS., and KREINDLER & RELKIN, P.C.,

Defendants.

HYMAN RAFFE,

Plaintiff,

- v -

KREINDLER & RELKIN, P.C., HON. WALTER M. SHACKMAN, "JOHN DOE" and "JOHN ROE", names fictitious, PERSONS INTENDED TO BE THOSE WHO COMMUNICATED WITH THE COURT EX PARTE,

Defendants.

HYMAN RAFFE,

Plaintiff,

- v -

DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, ESQ., CITIBANK, N.A., and JEROME H. BARR, ESQ. Individually and as EXECUTOR OF THE WILL OF MILTON KAUFMAN,

Defendants.

MOTION TO REARGUE

MOTION TO REARGUE AND AFFIRMATION IN SUPPORT OF MOTION TO REARGUE

SAM POLUR, an attorney duly licensed to practice law before the courts of this state, on the basis of this affirmation and all prior proceedings and documents filed herein, moves to reargue the decision of this Court dated August 21, 1986, denying leave to appeal from the denial of Polur's petition pursuant to CPL 440.10(1)(a)(b)(g) and (h), and, in support of said motion reargue pursuant to CPLR 2106 and the penalties of perjury, affirms and says:

A Case of First Impression

(1) Denial of Polur's Coram Nobis petition and denial of review by this Court absent a word of explication for such a decision presents a case of first impression in the courts of this state by implicitly approving in this state the following medieval practices:

(a) imprisonment without trial;
(b) conviction without accusatory instrument;
(c) conviction without evidence;
(d) conviction without presentation of testimony and without confrontation;

(e) criminal monetary fines made payable to private litigants;

(f) criminal prosecution by private litigants and not by the state;

(g) use of criminal process to gain civil litigation ends;

(h) criminal trial by affidavit;

(i) criminal jurisdiction over an accused without a special proceedings as required by statute;

(j) denial of a coram nobis hearing as required by statute and case law; and

(k) judicial misconduct in participating in all of the foregoing conduct.

(2) Penal servitude in our nation was always predicated on a trial where a presumptively impartial judicial officer conducted an evidentiary hearing, took testimony under oath, where the accused was permitted to attack that evidence and produce, if he chose, a case of his own. No one has asserted these fundaments took place in this case. No one has denied that a criminal contempt conviction was had on mere affidavits - in a case where Polur was not a party, where no jurisdiction was ever

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acquired over Polur by any legal means or mechanism.

(3) DID THIS OCCUR IN THE UNITED STATES OF AMERICA, IN NEW YORK, UNDER EXISTENT NEW YORK STATE AND UNITED STATES CONSTITUTIONS? Lamentably, the answer is yes. Oddly, this Court sits mute in the face of Polur's being denied elementary constitutional protections granted to the meanest criminal, to the most vicious and depraved among us irrespective of the heinous charge. As a Social Polity we rightly pride ourselves on such accused individuals having their rights scrupulously protected. But this enlightened Constitutional Tribunal is silent while a member of its own Bar is publicly pilloried and jailed without indictment, hearing, accusation, confrontation, counsel or evidence. This is initiated and openly effectuated by lawyers seeking private gain from a criminal conviction; by lawyers with not a scintilla of prosecutorial standing. The Court is directed as a puppet. A powerful and wealthy private lawfirm manipulates Judicial oppression and acts in tandem with a Constitutional Justice in violence of basic and fundamental protections of law.

(4) Indisputably, Civil Rights Law §12, inter alia, was abjured and violated. It reads: "§12. Rights of persons accused of crime - - In all criminal prosecutions, the accused has a right to a speedy and public trial, by an impartial jury, and is entitled to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor. ..." Not one iota of that civilized standard was observed.

(5) Polur's "crime" was indigenous to the Totalitarian State: representing a then-unpopular client; working with an unpopular (and much derided colleague). He became, unwittingly, the dupe of both client and colleague as they sought to embroil Polur in the dead sins of year-long litigation that Polur became involved in at five minutes to midnight.

(6) Polur's offense was allegedly serving a single summons where he merely acted as a process server; had not seen, drawn up, advised or legally concerned himself with such legal document. He violated thereby, allegedly, an injunction of a

Judge with which Polur had no legal attenuation, and at that time, was unaware such alleged "violation" was occuring. Instructively, it is undisputed that at the time of his allegedly contemptuous service of a single summons the injunction was never served upon Polur. Incredibly, that alleged summons has never been submitted to the Court as having been served upon the Lawfirm which acted as public prosecutors!

(7) There is not a single case in the history of New York jurisprudence where a criminal defendant was incarcerated without a charge, without a trial, without presentation of evidence, without testimony under oath, without even the feeble confrontation of the least prepared pro se defendant.

The Public "Prosecutor" Makes No Rejoinder

(8) The District Attorney of New York County, the public prosecutor, has had, since the inception of this criminal conviction and jailing, no know-

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ledge of the matter nor an interest in the case. The startling fact of the public prosecutor's lack of involvement in this criminal contempt conviction and jailing is before this Court. It is undenied by the private-attorney prosecutors. The sentencing and conviction Court remains indifferent to these Constitutional abberations.

(9) Both in this Court and before the trial court the private-attorney prosecutors have not denied a single allegation of fact or law and have not rebutted a single contention that conclusively reveal that Polur's conviction was unconstitutionally obtained; that his jailing was an unparralleled State action in New York, Kafkesque, Totalitarian, Unprincipled.

(10) In the face of those admissions of constitutional infirmities this Court sits silent, apparently circling the wagons about Justice Klein and the private-attorney prosecutors by validating their illegal conduct with a mantle of silence and silent approval.

(11) If must be pondered: What authority exists for this Court to approve incarceration without trial, confrontation or proof? What authority exists that validates the trial court's refusal to grant a statutorily and constitutionally mandated coram nobis hearing after having failed to assure that the accused and convicted and sentenced, duly licensed Attorney had the basic protections of accusatory instrument, trial, confrontation and proof beyond a reasonable doubt? If such authority does not exist that justifies Polur's criminal conviction and jailing, and the treatment accorded him before the courts of the State of New York, why does this Court sit silent?

Guilt by Association

(12) From the very inception of Polur's retention by Hyman Raffe he has been heaped with scurrilous abuse by the private-attorney prosecutors. No act has been too low, no falsehood too great but that the private-attorney prosecutors -- clearly immunized from the necessity of proof --

repeated them ad nauseum until they proved Dr. Goebbels' Big Lie postulate and their falehoods, in uncritical Judicial circles become sanctified as truths. Sadly, some of the Big Lies the private-attorney prosecutors told about Polur were true; not of Polur, however, but of George Sassower.

(13) The private-attorney prosecutors were not deterred by the fact that the main burden of the allegations they sought to lay at Polur's door antedated Polur's representation of Raffe by as much as five years! Typically, in Court pleadings and by oral denunciation they repeatedly stated Polur had engaged in "200 motions" of an oppressive character. Participation in "five motions" of the representative character cited would be difficult to establish by credible evidence! No court has troubled the private-attorney prosecutors with a demand for evidence. No record that contains evidence exists. Through it all this Court and Justice Klein sit silent. No evidence is needed: the legal confluence of Polur and Goerge Sassower,

Esq., merely being "on the same side of the case," suffices. What further evidence exists: None. But this Court sits silent. The private-attorney prosecutors have stated we are the sole explicators of the facts. We need not trouble to have trials. We need not adduce evidence. Our perjured affidavits are sufficient. Our testimony under oath, subject to cross-examination and penalties of perjury,you will never achieve. We have a number of key Justices and key Judicial figures under our control. We have the money, the power, the will and the audacity to destroy a practicing Attorney at Law through perjured affidavits. We are never going to be challenged. We can get a fortune from Hyman Raffe for him to avoid imprisonment for criminal contempt. No one challenges us.

The Appearance of Impropriety

(14) It is clear the motives of the private-attorney prosecutors are to be deemed inconsequential. Having disposed of Raffe's lawyers - and collaborating with Raffe's present lawyer who boasts of his unique "winning" capabilities - these lawyers

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have achieved sums in six figures by Raffe. Hyman Raffe's criminal contempt conviction is, apparently, thereby nullified. His lawyer goes to jail. He buys his way out of a criminal conviction. Openly, insofar as the attorney-prosecutors are concerned.

(15) Raffe and Raffe's lawyer, George Sassower, Esq., actively misrepresented the true facts of the Puccini Clothes Ltd. litigation to Polur. But the Courts smile on Raffe as he has disgorged enormous sums of monies to private-prosecutor attorneys. But obloquy is heaped on Polur when he claims the rights due the meanest, most ignominious defendant charged with the most revolting of crimes. Raffe's conviction is mystifyingly annulled: Polur's is affirmed. Polur remains prey to the false charges that were asserted against him without proof, without confrontation, without evidence under oath, without evidence at all, without hearing or trial. Through it all this Court sits silent: "justice"is served in this scenario if Polur is jailed and robbed of his good

name without accusatory instrument, trial or proof. Merely on perjured affidavits.

The Undrlying Premise

(15A) Feltman, Karesh & Major, Esqs., by way of Donald F. Schneider, Esq., filed the motion to hold Sam Polur, Esq., in Criminal Contempt of Court with full knowledge the said Attorney had not served the summons alleged to have been in violation of the Order of Justice Gammerman. It should prove instructive to trace the ambulatory route taken to procure this criminal conviction and jailing of an honorable man and an Attorney meriting respect:

B. Feltman, Karesh & Major, Esqs., submitted as an exhibit in support of their motion the same summons that Michael J. Gerstein, Esq., attorney representing Kreindler & Relkin, P.C., claimed and affirmed was served upon him personally in Supreme Court New York County by George Sassower, Esq., on April 10, 1985; which summons gave rise to Kreindler & Relkin's motion to hold Hyman Raffe and George Sassower, Esq., in Criminal Contempt of Court.

C. Feltman, Karesh & Major, Esqs., never

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produced the alleged summons served upon them allegedly by Sam Polur, Esq. They instead submitted, as their Exhibit "B", the summons that Geroge Sassower, Esq., had served upon Michael J. Gerstein, Esq., to support their motion to hold Sam Polur in Criminal Contempt, dated April 11, 1985.

D. The summons annexed thereafter as Exhibit "B" of Feltman, Karesh & Major's April 11, 1985 motion to hold Sam Polur, Esq. in Criminal Contempt bears the initials of Michael J. Gerstein, Esq., ("MJG"), with a hand-written notation: "---Rec'd in Ct. 4/10/85 MJG--"

E. This clearly demonstrates the intrinsic fraud perpetrated on the Court and on Sam Polur, Esq., in procuring an unlawful Criminal Conviction against Sam Polur, Esq.

F. On page 5 of Kreindler & Relkin's ("K&R") April 30, 1985 motion to Raffe and Sassower in Criminal Contempt of Court, Michael J. Gerstein, Esq., states that "a bare summons" (copy annexed as Exhibit "B") was

served on him on April 10, 1985 by George Sassower, Esq. The summons has "M.J.G.", the initials of Michael J. Gerstein, Esq., handwritten on it.

G. Feltman, Karesh & Major ("FK&M"), by Donald F. Schneider, Esq., annexed the exact same summons to their motion to hold Sam Polur, Esq. in Criminal Contempt. They also filed the same summons, with Michael J. Gerstein's initials on it, as Exhibit "E" in their affidavit in opposition to an Application for a Stay of Justice Klein's Order, dated July 3, 1985. This was, once again, the same summons that George Sassower had served on K&R.

H. Michael J. Gerstein, Esq., conclusively demonstrates that the summons in question was served upon him (Gerstein) by Sassower, and not upon Scheider by Polur! (See, e.g., Gerstein's affidavit in opposition to Raffe's motion to reargue, dated August 8, 1985, page 7, par.7; and Gerstein's affidavit in opposi-

tion to an application for a stay of Justice Klein's Order, page 6, dated July 3, 1985, citing Exhibit "C"). Again, the initials of Michael J. Gerstein are on the summons, proving the particular summons in question was served on K&R, by Sassower, and not on FK&M by Polur.

I. Additonally, Hyman Raffe and Ira Postel, Esq., in their affidavits in support of a motion to reargue, clearly and unequivocally state that the summons in question which commenced the action was served by George Sassower.

J. Your movant is also in receipt of a recent communication from Edward Weissman,Esq., for Feltman, Karesh, Major & Farbman, Esqs., successor firm to FK&M, to the effect that the Hon. Ira Gammerman, J.S.C., had, as recently as March 11, 1986 Ordered that a related proceeding by Sam Polur could not be maintained unless permission is granted by Justice Gammerman, allegedly pursuant to his Order of January 23, 1985.

K. Such admonition was and is a patent falsehood. It is merely another attempt to

confuse and mislead the Court. The said Order of Justice Gammerman, as this movant reads it, directly precludes George Sassower, Esq. and anyone acting as his agent, on his behalf, etc., from filing motions, lawsuits, pleading against said Lawfirm. Nowhere in the Order does it mention Sam Polur. It indeed does not preclude Sam Polur, Esq. from acting "defensively" on his own behalf, or to clear his name which has been sullied by FK&M.

L. Furthermore, it is instructive that Justice David Saxe on virtually the same papers presented by FK&M and Donald F. Schneider, Esq., to Justice Klein, PRIOR TO JUSTICE KLEIN'S RULING AND ORDER, and known to Justice Klein, FK&M and Donald F. Schneider, refused to hold Sam Polur, Esq. in Criminal Contempt for serving that summons, if one had been served by him, because there was no proof "beyond a reasonable doubt" that Polur served it in "wilfull disobedience to a lawful mandate!"

M. Surely, there cannot be a finding of proof beyond a reasonable doubt that Polur served

the summons in said action in wilful disobedience of a lawful mandate of the Court because the summons within was not served by Polur! FK&M knowingly, deliberately and fraudulently placed before a Justice of the Supreme Court of the State of New York false and misrepresenting statements in regards to Sam Polur, Esq's alleged conduct, and placed before the Court a document that they knew had never been served by Sam Polur, Esq!

A Wrong That Shocks The Conscience

(16) Polur, in his coram nobis memorandum cited mearly 100 authorities for the proposition that a criminal contempt conviction must be based on a special proceeding, that such had to be by state action as with all criminal charges, that Polur had a constitutional right to an accusatory instrument and strict proof of the allegations levied against him. But neither this Court nor Justice Klein are compelled to comment, maintaining a cool silence as Polur's constitutional rights are ravaged.

(17) Truly, this is a case which schocks the conscience. Polur is bereft of rights. For

all the State's Judicial Tribunals care, he sits like Captain Dreyfus in exile. Through it all, through George Sassower's falsely contending he represented Polur, through Polur's being condemned and imprisoned without service upon him of a single piece of paper, through the Constitutional wrongs which have been dealt Polur, and that have been laid before this Court in this proceeding and two others, the Court sits silent.

(18) When the Attorney whom the Supreme Court of the United States cited as their sole footnoted authority in Cuyler v. Sullivan, 446 U.S. 335, 344 (1980), a case which is the most fundamental ruling on the imperative duties of "retained" counsel; when the Attorney who, as a private citizen achieved the addition of two years to the probation sentence against Spiro Agnew, twice Vice President of the United States and who, effectively, culminated his overt pro-Arab-oil, anti-Israel public and private stance through the United States District Court for

the District of Baltimore, in 1976; when the Attorney who succeeded in convincing the United States Court of Appeals for the Fifth Circuit that Feodore Federenko, subsequently deported to Russia and now, allegedly, there sentenced to execution for Nazi collaboration as a Wartime Death Camp guard in Treblinka, Poland's Concentration Camp which executed some one and a half million prisoners - that the U.S. District Court, Roettger, J., had, effectively, usurped the prerogative of the President by exercising the Dispensing Power which exclusively resides in the Executive by "forgiving" Fedorenko for his perjury in gaining admittance to the United States in 1950; when the Attorney who, for the past two years has served, voluntarily, as an Arbitrator in the Small Claims part of the Civil Court and for a year served at night as teacher to Sing Sing inmates in Criminal Law and Domestic Relations Law, as a volunteer; who has in his 23 years of active practice as an Attorney directly assisted more than one hundred persons, impoverished

or otherwise in desperate straits, without one cent in fees as a matter of practice and simple morality -- is "convicted" without a trial, without an accusatory instrument, without any testimony under oath, without charges to which to respond, and sentenced to jail and imprisoned for the full 30-day term "found" in an "Order" facially a "civil contempt" Order, to wit, impregnated with civil contempt language and which orders that private-attorney prosecutors be paid fines personally -- when all this occurs before one of the most-renowned state Courts in the United States, in the State of New York, we must all weep for shame. All the basic issues cited herein were apparently overlooked by this Appellate Judicial Tribunal.

(19) Somehow, inexplicably, this Court has been not fully informed of the classic fundamentals intrinsic to this case. Clearly, had the meanest, dirtiest criminal committed a crime violating humanity, this Court would insure the civilized and Constitutional bulwarks were

afforded the accused. Every Charter of Liberty, from the Magna Carta, to ancient Codes, to our earliest State and Federal Charters of Liberty would be invoked. This Court would speak courageously and firmly. Rights would not be trampled on. Yet here an honored and honorable member of the Bar of this Court is subjected to the crunch of the oppressor. The Court has been blind-sided. It could not have read the formidable petition and briefs duly submitted herein. Failure to deny one single allegation spawned-by-blood herein cannot be ignored, or judicially buried. This is not merely a case of First Impression. Its Constitutional resolution must make it one of Lasting Impression. "Gideon's" Trumpet" was one National clarion call. The momentous issues in this case can prove to be another, even more piercing resolve for Free Men in a Free and Decent Society.

August 30, 1986. Respectfully submitted,

S/
SAM POLUR
Attorney, Pro Se

SUPREME COURT OF THE STATE OF NEW YORK, In-
Dividual Assignment PART 2

at the Courthouse thereof, 60 Centre Street,
New York, New York 10007

P R E S E N T :

Hon. ALVIN F. KLEIN,
Justice

HYMAN RAFFE,

-against-

XAVIER RICCOBONO, et al.,

July 1, 1986

No. 78 on Calendar of 6/2/86

Notice of Motion — Papers Numbered 1-3

...

Filed Papers 4

Upon the foregoing papers this motion by Sam Polur,Esq. for an order pursuant to Criminal Procedure Law §440.10(1)(a),(b), (g), and (h) vacating the order of this court dated June 26, 1985 insofar as it relates to him is denied. The court has carefully reviewed all of the papers submitted herein, including the decision by the

Appellate Division and other courts in this matter, and finds that movant has failed to establish any grounds for the relief requested.

Dated: June 23, 1986

s/ A.F.K.,
J.S.C.

County Clerk's Number: 9522/1985

NEW YORK STATE COURT OF APPEALS

1. Mo. No. 1171 SSD 158		
HYMAN RAFFE,		
Plaintiff-Appellant,	:	DECISION COURT
GEORGE SASSOWER, Esq., and SAM POLUR, Esq.,	:	OF APPEALS -
Appellants,	:	NOVEMBER 26, 1985
XAVIER C. RICCOBONO, et al.,	:	
Respondents.	:	

Appeal dismissed without costs, by the Court sua sponte, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.

Decision Court of Appeals

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on November 26, 1985.

Present - Hon. Theodore R. Kupferman, Justice Presiding,
Joseph P. Sullivan,
David Ross,
Arnold L. Fein,
Ernst H. Rosenberg, Justices.

- X

Hyman Raffe,
Plaintiff-Appellant, : M-5163
George Sassower,Esq. and Sam Polur, Esq.,
Appellants,
Xavier C. Riccobono, Donald Diamond, Feltman, Karesh & Major, Esqs. and Kreindler & Relkin, P.C.. : [Appeal No. 24069]
Defendants-Respondents. :

- - - - -

Hyman Raffe,
Plaintiff-Appellant, :
George Sassower, Esq.,
Appellant, :
-against-
Kreindler & Relkin, P.C., HOn. Walter M. Schackman, "John Doe", and "John Roe", names ficticious, persons intended to be those who communicated with the Court, ex parte, :
Defendants-Respondents. :

- - - - -

Hyman Raffe, :
Plaintiff-Appellant,
George Sassower, Esq., :
Appellant,
-against- :

Donald B. Relkin, Esq., Michael J. Gerstein, Esq., Kreindler & Relkin, P.C., Citibank, N.A. and Jerome H. Barr, Esq., individually and as Executors of the Will of Milton Kaufman,

Defendants-Respondents.

The above-named appellent Sam Polur, Esq., having moved for reargument of or leave to appeal to the Court of Appeals from this Court's order entered on September 17, 1985,

NOW, upon reading and filing the notice of motion, with proof of due service thereof, and the papers filed in support of said motion and the papers filed in opposition or in relation thereto; and due deliberation haveing been had thereon,

IT IS ORDERED that the motion be and the same hereby is denied in its entirety, with $20 costs.

E N T E R,

HAROLD J. REYNOLDS,
Clerk.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department; in the County of New York, on September 17, 1985

Present -- Hon. Theodore R. Kupferman, Justice Presiding
Joseph P. Sullivan
David Ross
Arnold L. Fein
Ernst H. Rosenberger, Justices.

HYMAN RAFFE,
Plaintiff-Appellant,
George Sassower, Esq. and Sam Polur, Esq.,
Appellants,
Xavier C. Riccobono, Donald Diamond, Feltman, Karesh & Major, Esqs. and Kreindler & Relkin, P.C.,
Defendants-Respondents.

- - - -

Hyman Raffe,
Plaintiff-Appellant,
George Sassower, Esq., 24069
Appellant,
-against-
Kreindler & Relkin, P.C., Hon. Walter M. Schackman, "John Doe", and "John Roe", names fictitious, persons intended to be those who communicated with the Court, ex parte,
Defendants-Respondents.

- - - -

Hyman Raffe,
Plaintiff-Appellant,
George Sassower, Esq.,
Appellant,
-against -
Donald B. Relkin, Esq., Michael J. Gerstein, Esq., Kreindler & Relkin, P.C., Citibank, N.A. and Jerome H. Barr, Esq., individually and as Executor of the Will of Milton Kaufman,
Defendants-Respondents.

APPEAL NO. 24069 CONTD.

An appeal having been taken to this Court by the above-named appellants from an order of the Supreme Court, New York County (Alvin Klein, J.), entered on July 1, 1985,

And said appeal having been argued by George Sassower of counsel for appellants, by Donald F. Schneider of counsel for respondent Feltman, Karesh & Major, Esqs,, and by Michael J. Gerstein of counsel for respondents Citibank, Barr, Kreindler & Relkin, Donald Relkin and Michael J. Gerstein; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be and the same hereby is affirmed, without costs and without disbursements.

ENTER:

HAROLD J. REYNOLDS

Clerk.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

----------X

HYMAN RAFFE,

Plaintiff,

Index No.
9522-1985

-against-

XAVIER RICCOBONO, DONALD DIAMOND,

FELTMAN, KARESH & MAJOR, Esqs., and
KREINDLER & RELKIN, P.C.,

Defendants.

----------X

HYMAN RAFFE,

Plaintiff,

-against-

KREINDLER & RELKIN, P.C., Hon. WALTER
M. SCHACKMAN, "JOHN DOE", and "JOHN ROE",
names fictitious, persons intended to be
those who communicated with the Court,
ex parte,

Defendants.

----------X

HYMAN RAFFE,

Plaintiff,

-against-

DONALD B. RELKIN, Esq., MICHAEL J.
GERSTEIN, Esq., KREINDLER & RELKIN, P.C.,
CITIBANK, N.A. and JEROME H. BARR, Esq.,
individually and as Executors of the
Will of Milton Kaufman,

Defendants.

----------X

S I R S :

PLEASE TAKE NOTICE, that Hyman Raffe, Goerge Sassower, and Sam Polur hereby appeal

to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department from an Order of the Supreme Court of the State of New York, County of New York, dated June 26, 1985, entered July 1, 1985 and each and every part of said Order.

Dated: July 2, 1985

Yours, etc.,

GEORGE SASSOWER, Esq.
Attorney for Hyman Raffe
and pro se
2125 Mill Avenue,
Brooklyn, New York 11234
718-444-3403

SAM POLUR, Esq.
Attorney pro se.
35 Montgomery Street
New York, New York 10002
212-608-7749

TO: Hon. Robert Abrams
Kreindler & Relkin, P.C.
Feltman, Karesh & Major, ESQS.

At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse, 60 Centre Street, New York on the 26th day of June 1985

P R E S E N T :

Hon. Alvin F. Klein,

Justice.

HYMAN RAFFE,

Plaintiff,

-against-

XAVIER C. RICCOBONO, DONALD DIAMOND, FELTMAN, KARESH & MAJOR, ESQ. and KREINDLER & RELKIN, P.C.,

Defendant.

JUL 1 1985

(Action No. 1)

Index No. 9522/85

ORDER

HYMAN RAFFE,

Plaintiff,

-against-

KREINDLER & RELKIN, P.C., Hon. WALTER M. SCHACKMAN, "JOHN DOE", and "JOHN ROE", names fictitious, persons intended to be those who communicated with the Court, ex parte,

Defendants.

(Action No. 2)

HYMAN RAFFE,

Plaintiff,

-against-

DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, ESQ., KREINDLER & RELKIN, P.C., CITIBANK, N.A., and JEROME H. BARR. ESQ., individually and as Executors of the Will of Milton Kaufman,

Defendants.

(Action No. 3)

Kreindler & Relkin, P.C., defendant in Actions No. 1 and Action No. 2; and Donald B. Relkin, Michael J. Gerstein, Kreindler & Relkin, P.C., Citibank, N.A. and Jerome H. Barr individually and as Executors of the Will of Milton Kaufman defendants in Action No. 3 having moved for: a) An order pursuant to CPLR 3211(a)1, 3211(a)3 and 3211(a)7 dismissing this action or alternatively permanently staying the action as being brought in violation of the Order of Justice Gammerman dated January 23, 1985; b) An order holding George Sassower and Hyman Raffe in three counts of criminal contempt of Court on the grounds that in commencing each of these three actions they have flagrantly and deliberately violated the injunction issued by Justice Gammerman, which injunction permanently enjoined and restrained George Sassower and Hyman Raffe and anyone acting in concert or cooperation with either of them from filing or serving any further lawsuits against any of the Movants arising out of the enforcement

of Hyman Raffe's guarantees; c) awarding to the Movants damages including reasonable attorneys' fees which resulted from the violation of Justice Gammerman's injunction by Hyman Raffe and Goerge Sassower, pursuant to Judiciary Law §773 and the prior order of this Court which held that "future motions by Messrs. Sassower and Raffe should be examined in light of the well established exception to the American Rule that attorneys' fees are recoverable in response to vexatious suits and litigation commenced in bad faith"; and

Feltman, Karesh & Major, defendant in Action No. 1, having moved for an order:

(i) permanently staying and enjoining the prosecution of this action against defendant Feltman, Karesh & Major in accordance with this Court's permanent injunction order of January 23, 1985 (Gammerman, J.) (the "Permanent Injunction Order"); or alternatively,

(ii) dismissing this action pursuant to CPLR 3211(1) 1,3 and 5 as barred by the Permanent Injunction Order; and

(iii) punishing attorney George Sassower, plaintiff Hyman Raff and Samuel Polur, who served the Summons with full knowledge of the Permanent Injunction Order, as and for a criminal contempt of court on the grounds that in serving the Summons and in commencing this action they have flagrantly and deliberately violated the Permanent Injunction Order, which Order, inter alia, permanently enjoined and restrained George Sassower and Hyman Raffe and anyone acting in concert or cooperation with either or both of them filing or serving any further lawsuits against Feltman, Karesh & Major, arising out of or relating to, inter alia, the judicial dissolution, the receivership of Puccini Clothes, Ltd. or the representation of the Receiver by Feltman, Karesh & Major; and

(iv) awaring to Feltman, Karesh & Major

damages, including reasonable attorney;s fees, which resulted from the violation of the aforesaid Order by George Sassower, Hyman Raffe and Samuel Polur, pursuant to Judiciary Law, §773 and the prior Order of this Court which held that "future motions by Messrs. Sassower and Raffe should be examined in light of the well-established exception to the American rule that attorneys' fees are recoverable in response to vexatious suits and litigations commenced in bad faith"; and

(v) for such other, further and/or different relief as to this Court may seem just and proper:

NOW, upon reading and filing the Notice of Motion of Kreindler & Relkin, P.C., dated April 30, 1985, the affidavit of Michael J. Gerstein, duly sworn to on April 30, 1985, and the exhibits annexed threto; the affidavit of personal service of the Notice of Motion on Hyman Raffe of Roger Dougherty, sworn to on May 13, 1985; the affidavit of personal service of the

Notion of Motion on George Sassower of Roger Dubin sworn to on May 6, 1985, all in support of Kreindler & Relkin, P.C.'s motion, and upon the Notice of Motion of Feltman, Karesh & Major dated April 11, 1985, the affidavit of Donald F. Schneider, duly sworn to on April 11, 1985, and the exhibits annexed thereto; the affidavit of service of the Notice of Motion on George Sassower of Donald F. Schneider sworn to on April 19, 1985; the affidavit of service of the NOtice of Motion on Samuel Polur of Donald F. Schneider, sworn to on April 19, 1985; the Supplemental Affirmation of Donald F. Schneider, dated May 6, 1985 all in support of Feltman, Karesh & Major's motion, and said motion having regularly come on to be heard for oral argument before the Honorable Alvin F. Klein at Special Term Part 1 of this Court on May 29, 1985; and after hearing Kreindler & Relkin, P.C. by Michael J. Gerstein, Esq., and Feltman, Karesh & Major by Donald F. Schneider, Esq., in support of the motions, and Sam Polur, Esq., on behalf of Hyman Raffe, George Sas-

sower and Sam Polur in opposition thereto.

And due deliberation having been had thereon; and Hyman Raffe, George Sassower and Sam Polur, having commenced these actions and served the summonses in wilful and deliberate violation of an order of Justice Gammerman dated January 23, 1985, which Order permanently enjoined commencement of actions such as these three, which were commenced with full knowledge of the said Order, and the conduct of Hyman Raffe, George Sassower and Sam Polur having been calculated to and having defeated, impaired, impeded and prejudiced the rights of defendants Kreindler & Relkin, P.C., in Action No. 2, and Donald B. Relkin, Esq., Michael J. Gerstein, Esq., Kreindler & Relkin, P.C., Citibank, N.A. and Jerome H. Barr, Esq., individually and as Executors of the Will of Milton Kaufman in Action No. 3; and this Court having rendered a decision dated June 6, 1985;

Now, on motion of Kreindler & Relkin, P.C. and Feltman, Karesh & Major, it is

ORDERED, that motions Nos. 21 & 178 on the calendar of May 29, 1985 are consolidated for disposition; and it is further ORDERED that the motions are granted, and it is further

ORDERED, that so much of defendants' motions as seek to dismiss these actions pursuant to CPLR 3211(a)1, CPLR 3211(a)3, CPLR 3211(a)5 and CPLR 3211(a)7 are granted; and it is further

ORDERED, that Action No. 1 is dismissed pursuant to CPLR 3211(a)1, CPLR 3211(a)3, CPLR (a)5, and CPLR 3211(a)7 as to defendants Feltman, Karesh & Major Esqs., and Kreindler & Relkin, P.C.; and it is further

ORDERED, that Action No. 2 is dismissed pursuant to CPLR 3211(a)1, CPLR 3211(a)3, CPLR (a)5, and CPLR 3211(a)7 as to defendant Kreindler & Relkin, P.C.; and it is further

ORDERED, that Action No. 3 is dismissed pursuant to CPLR 3211(a)1, CPLR 3211(a)3, CPLR (a)5, and CPLR 3211(a)7 as to all defendants therein; and it is further

ORDERED, that the motions of Kreindler & Relkin, P.C. to punish Hyman Raffe and George Sassower for criminal contempt, and the motion of Feltman, Karesh & Major to punish George Sassower and Samuel Polur for a criminal contempt, are granted in all respects; and it is further

ORDERED AND ADJUDGED, that Hyman Raffe, George Sassower and Samuel Polur are guilty of criminal contempts of court for having wilfully and deliberately violated the Order of Justice Gammerman, dated January 23, 1985, which Order permanently enjoined commencement of the within actions; and it is further

ORDERED, that pursuant to the Judiciary Law of the State of New York, by reason of such criminal contempt of court, Hyman Raffe, George Sassower, and Samuel Polur shall each be imprisoned for a period of thirty (30) days in the jail of the county of this Court, and George Sassower shall pay a fine of $250.00 to each of Feltman, Karesh & Major, 55 East 52nd Street, New York, New York, Kreindler & Relkin, P.C., Donald

B. Relkin, Esq., Michael J. Gerstein, Esq., 500 Fifth Avenue, New York, New York and Citibank, N.A. and Jerome H. Barr, individually and as Executors of the Will of Milton Kaufman, One Citicorp Center, New York, New York, Hyman Raffe shall pay a fine of $250.00 to each of Feltman, Karesh & Major, 55 East 52nd Street, New York, New York, Kreindler & Relkin, P.C., Donald B. Relkin, Esq., Michael J. Gerstein, Esq., 500 Fifth Avenue, New York, New York and Citibank, N.A. and Jerome H. Barr, individually and as Executors of the Will of MIlton Kaufman, One Citicorp Center, New York, New York and Sam Polur shall pay a fine of $250.00 to Feltman, Karesh & Major, 55 East 52nd Street, New York, New York within ten (10) days after personal service of a certified copy of this Order upon them; and it is further

ORDERED, that the Sheriff of any County in the State of New York wherein Hyman Raffe, George Sassower and Samuel Polur, or any of

them may be apprehended, is directed to take him or them into his custody and detain him or them in the Civil Jail or other appropriate facility until the completion of their or his term of thirty days or until he or they shall be otherwise discharged, according to law; and it is further

ORDERED, that those branches of the motions seeking recovery of damages, including attorneys' fees incurred as the result of defending these actions, are granted to the extent that the matter of evaluating and apprising the reasonable value of such damages and attorneys' fees is referred to Trial Term, Part 10 for assignment to hear and report with recommendations and that pending receipt of the report, final determination of those portions of the motions is held in abeyance. Counsel are directed to forthwith serve a conformed copy of this Order or the clerks of the office of the

Referees for the purpose of arranging a calendar date.

E N T E R

s/ A.F.K.

J.S.C.

F I L E D
July 1, 1985
County Clerk's Office
New York

SUPREME COURT OF THE STATE OF NEW YORK, SPECIAL TERM PART 1, NEW YORK COUNTY

at the Courthouse thereof, 60 Centre Street, New York, New York, 10007.

Present:

Hon. ALVIN F. KLEIN
Justice

HYMAN RAFFE

-against-

XAVIER C. RICCOBONO, et al.

[Filed June 7, 1985]

The following papers numbered 1 to 5 read on this motion, Argued and submitted

No 21 on Calendar of May 29, 1985

Notice of Motion - Order to Show Cause and Affidavits Annesed, Exhibits A-J

Answering Affidavit in Opposition

[PAPERS NUMBERED
1 - 4
5]

Motion disposed of in accord with the accompanying memorandum decision

DATED: June 6, 1985

County Clerk's Number: 9522/85

s/ A.F.K.
J.S.C.

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SUPREME COURT : NEW YORK COUNTY
SPECIAL TERM : PART 1

HYMAN RAFFE,

Plaintiff,

-against-

XAVIER C. RICCOBONO, et al.,

Defendants.

: Index No. 9522/85
: Cal.No. 21
: Cal. Date 2/29/85
: [Filed June 7, 1985]

KLEIN, ALVIN F., J.:

Motions numbered 21 and 178 on the calendar of May 29, 1985 are consolidated for disposition.

Motion no. 178 is by various defendants in three separate actions seeking an order pursuant to CPLR 3211 dismissing these actions or, in the alternative, permanently staying them on the grounds that they were commenced in violation of the permanent injunctive order of Justice Gammerman dated January 23, 1985; for an order pursuant to §§750(3) and 751 of the Judiciary Law punishing plaintiff Raffe and his attorney, George Sassower,

for criminal contempt of court for deliberate violation of the said order dated January 23, 1985; and for an order pursuant to §773 of the Judiciary Law awarding movants damages, including reasonable attorneys' fees, resulting from Raffe's and Sassower's violation of the January 23, 1985 order.

Motion no. 21 is by a defendant in another action seeking similar relief against Sassower and against Samule Polur, the attorney who served the summons in that action with full knowledge of the January 23, 1985 order of Justice Gammerman.

Criminal contempt is established when there is a clear and definit court order, and the contemnor knows of the order and willfully disobeys it (see §750 Judiciary Law; State v. Congress of Racial Equality, 92 AD2d 815).

It is evident that the order of Justice Gammerman dated Janaury 23, 1985 enjoined commencement of the within actions. It is also apparent that these actions were brought sub-

sequent to the issuance of that order and that they were brought by and served by persons with knowledge of that order.

Upon a careful reading of all of the papers submitted herein and after oral argument before this court on May 29, 1985, it is clear to this court that plaintiff Raffe and the attorneys Sassower and Polur have willfully and deliberately flouted the aforesaid order of Justice Gammerman. Their flagrant disregard of the order is an affront to the dignity of the court and warrants imposition of criminal contempt sanctions.

Accordingly, those parts of the motions seeking orders punishing Raffe, Sassower and Polur for criminal contempt are granted.

Those branches of the motions seeking recovery of damages including attorneys' fees incurred as a result of defending these actions are granted to the extent that the issue of the reasonable value of such damages and attorneys' fees is hereby referred to Trial Term Part 10 for

assignment to hear and report with recommendations. Pending receipt of the report, final determination of these portions of the motions shall be held in abeyance. Counsel are hereby directed to file a copy of this order with the Office of the Referee, Room 308M, 60 Centre Street, for the purpose of obtaining a calendar date.

Inasmuch as commencement of these actions had been barred by the order of Justice Gammerman dated January 23, 1985, those portions of the motions seeking orders dismissing these actions are granted with prejudice.

Settle order.

s/A.F.K.

J.S.C.

Dated: June 6th, 1985.

52

SUPREME COURT : NEW YORK COUNTY

HYMAN RAFFE,

Plaintiff,

-against-

XAVIER C. RICCOBONO, DONALD DIAMOND, FELTMAN, KARESH & MAJOR, Esqs., and KREINDLER & RELKIN, P.C.,

Defendants.

X Index No.

Plaintiff designates New York County as the Place of trial

The basis of venue is

Defendant's place of business

SUMMONS with NOTICE

Plaintiff resides at

County of

To the above named Defendant

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance , on the Plaintiff's attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear of answer, judgment will be taken against you by default for the relief demanded herein.

Dated, April 10, 1985

Defendant's Address:

GEORGE SASSOWER, Esq.
Attorney(s) for Plaintiff
Office and Post Office Address

2125 Mill Avenue,
Brooklyn, New York 11234
718-444-3403

Notice: The nature of this action is violation of Judiciary Law, deceit, obstruction of justice

The relief sought is damages

filed in Ct 4/10/85 mpc

Upon your failure to appear, judgment will be taken against you by default for the sum of $10,000,000 with interest from 19 and the costs of this action

BEST AVAILABLE COPY

(10)

: 105—Summons with Notice, Blank Court. Personal Service. 1-79

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SUPREME COURT : NEW YORK COUNTY

HYMAN RAFFE,

Plaintiff

against

XAVIER C. RICCOBONO, DONALD DIAMON, FELTMAN, KARESH & MAJOR, Esqs., and KREINDLER & RELKIN, P.C.

Defendant

Index No.

Plaintiff designates New York County as the place of trial

The basis of the venue is Defendant's place of business

Summons with Notice

Plaintiff resides at

County of

To the above named Defendant

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated, April 10, 1985
Defendant's address

GEORGE SASSOWER, Esq.
Attorney(s) for Plaintiff
Office and Post Office Address
2125 Mill Avenue,
Brooklyn, New York, 11234
:718-444-3403

Notice: The nature of this action is violation of Judiciary Law, ~~fraud~~ obstruction of justice.

The relief sought is damages

Upon your failure to appear, judgment will be taken against you by default for the sum of $ ~~500,000~~ 10,000,000 with interest from 19 and the costs of this action.

Served by George Sassower, Esq. on
Copy of Original Summons
EXHIBIT

filed in ct 4/10/85 mpc

Exhibit C Exhibit D Exhibit E Exhibit F

No. 86-1209 (3)

Supreme Court, U.S.
FILED
MAR 6 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

SAM POLUR,

Petitioner,

– against –

THE STATE OF NEW YORK, HON. ALVIN F. KLEIN,
Justice, Supreme Court State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, NEW YORK STATE SUPREME COURT

MEMORANDUM OPPOSING CERTIORARI

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Respondents Klein and the State of New York
120 Broadway
New York, New York 10271
(212) 341-2020

O. PETER SHERWOOD
Solicitor General

LAWRENCE S. KAHN
Deputy Solicitor General

CHRISTOPHER KEITH HALL
Assistant Attorney General

Of Counsel

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No. 86-1209

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

SAM POLUR,

Petitioner,

-against-

THE STATE OF NEW YORK, HON. ALVIN F. KLEIN, Justice, Supreme Court State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, NEW YORK STATE SUPREME COURT

MEMORANDUM OPPOSING CERTIORARI

Neither the Hon. Alvin F.

Klein, Justice of the Supreme Court of New York, New York County, nor the Attorney General of the State of New York has ever been a party to the coram nobis proceeding sought to be reviewed here or the underlying civil proceedings in which the criminal contempt prosecution occurred. Indeed, none of the documents included in petitioner's appendix list Justice Klein or the State of New York in the caption. The Attorney General of the State of New York has been informed that Feltman, Karesh, Major & Farbman (formerly Feltman, Karesh & Major), the party which prosecuted the criminal contempt proceeding and the only party with full knowledge of the relevant facts and complete files, has

not been served with a copy of the petition.

Petitioner never petitioned for a writ of certiorari after his direct appeal, his state and federal petitions for a writ of habeas corpus, or his other collateral attack on the contempt conviction. He applied for relief in the nature of a writ of error coram nobis on May 14, 1986, pursuant to N.Y. Crim. Proc. Law § 440.10 (McKinney 1983). That statute provides that the court must deny a motion to vacate a judgment when "[t]he ground or issue raised upon the motion was previously determined on the merits upon an appeal from the judgment," § 440.10(2)(a), or the movant unjustifiably failed to raise such ground or issue on an appeal when

there were sufficient facts appearing on the record of the proceedings underlying the judgment to have permitted adequate review. § 440.10(2)(c). The court "carefully reviewed all of the papers submitted" by petitioner and found that he had "failed to establish any grounds for the relief requested." Raffe v. Riccobono, No. 9522/85 (Sup. Ct. New York Co. June 23, 1986) (lodged with the Clerk).

Virtually every issue raised on petitioner's coram nobis motion was determined on the merits by the New York courts on his direct appeal.[1]

---

[1]For example, he raised on direct appeal his state claims of lack of
(Footnote Continued)

The remaining state and federal issues could, on the basis of the record of the proceedings underlying the judgment, have been raised on his direct appeal.[2]

(Footnote Continued)
personal and subject matter jurisdiction, Appellants' Brief and Appendix in the Appellate Division, First Department ("1st Dep't br."), at 13, 16, and that the contempt order was procurred by fraud and misrepresentation, 1st Dept' br. 9. He also raised his federal claims that prosecution of criminal contempt by private parties was unconstitutional, Jurisdictional Statement, New York Court of Appeals ("Jur. State."), at 10; that he was entitled to a trial, 1st Dep't br. 2, 12, 16; that the conviction violated the prohibition against double jeopardy, 1st Dep't br. 13, and that the proceedings denied him equal protection of the law. Jur. State. 8. These documents have been lodged with the Clerk.

[2]For example, nothing could have prevented him from raising his federal claim that the conviction was based on
(Footnote Continued)

Thus, the denial of coram nobis relief rested on an independent and adequate state procedural ground. This Court will not consider a federal question when it has not been raised, presented, and pursued in a timely and proper manner at the appropriate points in the state court proceedings. Wolfe v. North Carolina, 364 U.S. 177, 195 (1960). Thus, jurisdiction of this Court does not attach when a federal question is initially raised in a petition or assignment of errors filed in the state's highest court,

---

(Footnote Continued)
proof beyond a reasonable doubt, or his state law claim that the court had no jurisdiction because there was no lawful mandate. Nothing in the record indicates that he could not have raised any other matter on direct appeal.

which refuses to consider any issue not raised in the trial court. Bailey v. Anderson, 326 U.S. 203, 206-07 (1945); Herndon v. Georgia, 295 U.S. 441, 443 (1935) (attempt to raise federal question for first time on rehearing). See also Engle v. Isaac, 456 U.S. 107, 110 (1982); (failure to follow state procedural requirements for raising federal questions precludes federal habeas corpus review); Wainright v. Sykes, 433 U.S. 72, 79-80 (1977) (same).

Moreover, the petition fails to conform to the rules of this Court in numerous respects. For example, the 12-page list of questions presented fails to comply with the requirement that they "should be short and concise and should not be

argumentative or repetitious." Sup. Ct. R. 21.1(a). It fails to contain a list of all the parties to the proceeding in the court whose judgment is sought to be reviewed, as required by Rule 21.1(b). As demonstrated above, the caption lists only persons who were not parties. The petition also fails to

> specify the stage in the proceedings, both in the court of first instance and in the appellate court, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by the court; such pertinent quotation of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this Court

> jurisdiction to review the judgment on writ of certiorari.

Sup. Ct. R. 21.1(h). The appendix fails to comply with Rule 21.1(k)(ii) because it fails to include copies of all the relevant opinions and orders rendered by courts in this case.[3] "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition." Sup. Ct. R. 21.5. See also Sup. Ct. R. 21.2.

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[3]For example, it omits the June 23, 1986 order denying coram nobis relief.

CONCLUSION

For all the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for
Respondents
Klein and the State of
New York
120 Broadway
New York, N.Y. 10271
(212) 341-2020
By:

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Assistant Attorney
General

O. PETER SHERWOOD
Solicitor General

LAWRENCE S. KAHN
Deputy Solicitor General

CHRISTOPHER KEITH HALL
Assistant Attorney General
Of Counsel

No. 86-1209

SUPPLEMENTAL APPENDIX FOR PETITIONER

Supreme Court, U.S.
FILED
MAR 20 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1986

SAM POLUR,

Petitioner,

-against-

THE STATE OF NEW YORK, HON. ALVIN F. KLEIN, Justice, Supreme Court State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, NEW YORK STATE SUPREME COURT

SAM POLUR, Esq.
Attorney Pro Se for
Petitioner
391 East 149 Street, Suite318
Bronx, New York 10455
(212) 402-6497

No. 86-1209

SUPPLEMENTAL APPENDIX FOR PETITIONER

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

SAM POLUR,

Petitioner,

v.

THE STATE OF NEW YORK, HON. ALVIN F. KLEIN, Justice, Supreme Court State of New York,

Respondents.

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SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

HYMAN RAFFE,

Plaintiff,

vs.

XAVIER RICCOBONO, DONALD F. DIAMOND, FELTMAN, KARESH & MAJOR, Esqs., and KREINDLER & RELKIN, P.C.,

Defendants.

HYMAN RAFFE,

Plaintiff,

vs.

KREINDLER & RELKIN, P.C., HON. WALTER M. SHACKMAN, "JOHN DOE" and "JOHN ROE", names fictitious, PERSONS INTENDED TO BE THOSE WHO COMMUNICATED WITH THE COURT EX PARTE,

Defendants.

HYMAN RAFFE,

Plaintiff,

vs.

DONALD B. RELKIN, Esq., MICHAEL J. GERSTEIN, Esq., CITIBANK, N.A., and JEROME H. BARR, Esq., Individually and as Executor of the Will of Milton Kaufman,

Defendants.

Index No. 9522/85

NOTICE OF MOTION

SECOND PETITION FOR ERROR CORAM NOBIS

SIR:

PLEASE TAKE NOTICE, that upon the annexed affirmation of SAM POLUR, Esq., dated November 29, 1986, and upon all other pleadings, proceedings, and papers heretofore had, served and/or filed herein, the undersigned will move this Court, at a Special Term, Part 13, Justice Stecher, J.S.C., to be held at the Courthouse, 60 Centre Street, City, State and County of New York, on the 6th day of January, 1987 at 9:30 A.M. in the forenoon of that day or as soon thereafter as counsel, Pro Se, can be heard, for an Order pursuant to Criminal Procedure Law Section 440.10, subds.(1)(g)(h), vacating so much of the Judgment and Order made in the Supreme Court, by Hon. Alvin F. Klein, Supreme Court Justice, on or about June 26, 1985, and entered in the Office of the Clerk of the County of New York, Supreme Court on or about July 1, 1985, finding SAM POLUR, Esq.., guilty of Non-Summary Criminal Contempt, allegedly pursuant of Judiciary Law Section 750 et seq., and sentencing him to thirty (30) days imprisonment and monetary punishment in the sum

of Two Hundred Fifty ($250.00) Dollars to be paid to defendant Law Firm of FELTMAN, KARESH & Major, Esqs.; and for such other further and different relief as to this Court may be deemed just and proper in the premises, including vacature of the entire Order of July 1, 1985 by the said Justice Klein.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 2214(b), answering papers, if any, are required to be served so as to be received by the undersigned at least seven (7) days prior to the return date of this Motion.

Dated: December 15, 1986
Bronx, New York 10455

s/
SAM POLUR, Esq.
Attorney Pro Se
391 East 149 St., Suite 213
Bronx, New York 10455
(212) 402-6497

TO: HON. ROBERT MORGENTHAU
District Attorney of New York County

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK [Index No.9522/85]

---X

HYMAN RAFFE,

Plaintiff,

vs.

XAVIER RICCOBONO, DONALD DIAMOND, FELTMAN, KARESH & MAJOR, ESQS., and KREINDLER & RELKIN, P.C.,

Defendants.

---X

HYMAN RAFFE,

Plaintiff,

vs.

KREINDLER & RELKIN, P.C., HON. WALTER M. SHACKMAN, "JOHN DOE", names ficticious, PERSONS INTENDED TO BE THOSE WHO COMMUNICATED WITH THE COURT EX PARTE,

Defendants.

---X

HYMAN RAFFE,

Plaintiff,

vs.

DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, Esq., KREINDLE$ & RELKIN, P.C., CITIBANK, N.A., and JEROME H. BARR, ESQ., INDIVIDUALLY AND AS EXECUTOR OF THE WILL OF MILTON KAUFMAN,

Defendants.

---X

AFFIRMATION IN SUPPORT OF MOTION BY ATTORNEY PRO SE

SAM POLUR, Esq., duly licensed Attorney at Law, State of New York, respectfully affirms pursuant to CPLR 2106 and penalties of perjury, in support of the Motion herein, as follows:

1. I herewith respectfully state that at all material times I have personally been fully apprised of every major element in this proceeding inasmuch as I have been the Attorney-Principal throughout.

2. I fully know of and herewith adopt as though fully set forth hereinafter the entire Letter and Exhibits of George Sassower, Esq., dated October 22, 1986, to Gerald Ster, Esq., of the Commission on Judicial Conduct and Michael A. Gentile, Esq., of the First Department Disciplinary Committee, annexed hereto and duly submitted.

3. This Affirmation, additionally, is written to stress the fullest adherence to Criminal Procedure Law (hereinafter "CPL") §440.10 and the following major subdivisions thereof: CPL 440.10 subds. (1)(a)(g)(h). The reasons follow:

A. Again, your affirmant will alert the Court to the fact that subject-matter jurisdiction never attached to the instant proceeding due to the failure of the moving party, Feltman, Karesh, and Major, Esqs., to initiate Criminal Contempt Proceedings by way of an independent special proceeding. Consequently, any Judgment or Ruling is a Constitutional and Jurisdictional nullity.

Furthermore, the fact that your affirmant was not a named party to the action he could not be accused of nor tried for a criminal offense absent a legally and facially sufficient accusatory instrument. Therefore, there was no in personam jurisdiction. Your affirmant's constitutional Due Process rights, to be sufficiently informed of the criminal conduct he is accused of prior to being held to account for such alleged criminal conduct, were egregiously abridged herein.

B. I seek the relief herein based on newly discovered evidence of a most substantive nature. (amphasis added)

C. On October 22, 1986, George Sassower, Esq., addressed a letter to Gerlad Stern, Esq., of the Commission on Judicial Conduct.

D. Mr. Sassower's letter finally spotlights the events of April 10, 1985, and gives the lie to the assertion that I, Sam Polur, served a summons on Donald F. Schneider.

E. Mr. Sassower states: "I have repeatedly stated that if a summons was served on Mr. Schneider on that day [April 10, 1985), the one he annexed is not that summons. See Exh. "A",p.2 para.5(a). (emphasis added)

F. Mr. Sassower states further: "By affidavit, by affirmation, by correspondence to various courts, state and federal, I must have stated at least fifty (50) times that Mr. Polur did not serve any summons on Mr. Schneider on April 10, 1985, as he (Schneider) claims, and that if any service was made, it was made by me." (emphasis added) (Id.p.3,para.7a.)

G. Mr. Sassower continued: "In open court, at the end of June 1985, while Mr. Polur was still incarcerated, before Mr. Justice Alvin F. Klein, I stated that I served the aforementioned summons on Mr. Gerstein and Mr. Schneider, and that Mr. Schneider's (sic) accusation [that Mr. Polur served the

summons] was false and perjurious." (Id., para.99.)

4. It is therefore more than clear that my criminal conviction is based on false facts, facts that, as well be seen, have no legal foundation, and must be vacated.

5. On or about November 24, 1986, Mr. Sassower, while incarcerated in the Bronx Mens House of Detention on another in the serial contempt proceedings in the Puccini litigation, was granted habeas corpus relief because Mr. Sassower, like myself, was convicted without trial.

6. United States Magistrate Nina Gershon, in her report to United States District Judge David N. Edelstein, found that an alleged contemnor charged with non-summary contempt is entitled to procedural protections and the safeguards of the Sixth and Fourteenth Amendments. (See Exhibit "B", Report of Magistrate Gershon, at 7-8)

7. Magistrate Gershon wrote: "Petitioner [Sassower] correctly relies on Bloom v.

Illinois, 391 U.S. 194 (1968)] for his claim that a conviction for non-summary criminal contempt without a trial of any kind is unconstitutional." (Id. at 8)

8. As my situation is a light year less damaging than is Sassower's on the five years of litigation he was involved in prior to my entry on the scene, and the fact that all I was accused of was allegedly serving a prohibitted summons, my conviction is equally unconstitutional and must be vacated. For continuity highlights of pages "6" to "8" of Magistrate Gershon's Report and Recommendation is herewith repated and set forth:

> "Criminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both. [C]onvictions for criminal contempt are indistinuishable from ordinary criminal convictions, for the impact on the individual defendant is the same." Bloom v. Illinois, 391 U.S. 194, 201 (1968). Although certain factual situations may warrant procedures in a criminal

contempt proceeding that are distinct from the ordinary action, e.g., United States ex rel. Vuitton v. Klayminc, 592 F.Supp. 734 (S.D.N.Y.1984), aff'd with opinion, 780 F.2d 179 (2dCir.1985), Bloom v. Illinois has"left no doubt that contempt defendants are entitled to all fundamental procedural protections..." 592 F.Supp. at 741. Such fundamental procedures include a finding of guilty on the grounds that the evidence established, beyond a reasonable doubt, In re Weiss, 703 F.2d 653,662(2dCir. 1983), that the "requisite intent was present." In re Irving, 600 F.2d 1027,1037 (2dCir.1979).

"Every Appellate Division in the State of New York has recognized the significance of Bloom. N.A.Development Co.Ltd. et al. v. Carolyn Jones et al.,99 A.D.2d 238,242 (1stDept.1984); Holtzman v. Beatty, 99 A. D.2d 79,82 (2dDept.1983); Ingraham v. Maurer, 39 A.D.2d258,259 (3rdDept.1972); State University of New York v. Denton, 35 A.D. 2d 176,181 (4thDept.1970). In Ingraham v. Maurer, supra,39 A.D.2d at 259, the Court acknowledged, after citing Bloom, "that a criminal contempt proceeding is a criminal proceeding to which the basic fundamentals are applicable to the same extent as in any other criminal trial.

While the Bloom case was directed solely at the issue of the right to a jury trial, it, nevertheless, equates the contempt proceeding with an ordinary criminal proceeding." In N.A. Development Co. Ltd., supra, 99 A.D.2d at 242, the Appellate Division, First Department, citing Bloom, acknowledged that "[c]riminal contempt must apparently be proved beyond a reasonable doubt." Accord, County of Rockland v. CESA, 62 N.Y.2d 11,14 (1984).

"I find that the procedures afforded to petitioner prior to the Appellate Division order of incarceration did not comport with the mandates of the Fourteenth and Sixth Amendments of the United States Constitution. It is clear from the Referee's report that his recommendation was based entirely on the papers before him. Concedely, neither a full evidentiary hearing nor a public trial was afforded petitioner prior to the REferee's findings of guilt. Furhtermore, there is no indication that the determination of guilt was based on a finding that the evidence proved petitioner's guilt, including the requisite intent, beyond a reasonable doubt. The reasons given by the Referee as justification for the conclusion that neither a hearing nor a trial as warranted failed to take into consideration the constitutional requirements of non-summary criminal contempt proceedings.

"The receiver contends that petitioner's

reliance on Bloom v. Illinois is misplaced because petitioner did not request a jury trial. The receiver has misconstrued both petitioner's claim and the significance of Bloom. Petitioner correctly relies on Bloom as support for his claim that a conviction for non-summary criminal contempt without a trial of any kind is unconstitutional." (emphasis added)

9. Your affirmant, in the instant case:

A. Was never before a Court possessing subject matter jurisdiction.

B. Was never before a Court possessing in personam jurisdiction.

C. Was never properly and lawfully accused of the crime (sic) by a facially sufficient and jurisdictionally-sound accusatory instrument. Or any instrument.

D. Was never afforded his most basic right to Due Process and Equal Protection of the Law, no trial by jury and no confrontation of his accusers through failure to allow cross-examination of the accusatory person and/or instruments. No accuser under oath! And, was convicted and jailed without one iota of evidence being placed before the Court.

Truly a Wrong Which Shocks the Conscience

10. Truly, this is a case which shocks the conscience. Your affirmant is bereft of rights. For all the State's Judicial Tribunals care, he sits like Captain Dreyfus in exile. Through it all, through George Sassower's falsely contending he represented Polur at the Appellate Division First Department - that man sought a "habeas corpus" ruling without notification to affirmant then imprisoned; wihtout notification to this affirmant; without any record being made; without a single positive statement about the wretched victimization exercised against petitioner because his true story of serving a mere summons in the dark on a rain-drenched night as a favor to Sassower, without even having looked at same or known it was forbidden, allegedly, through the Order of Justice Gammerman; through Polur's being condemned and imprisoned without service upon him of a single piece of paper; through the Constitutional wrongs which have been dealt Polur, and that have been laid before this Court in this proceeding and one

prior hereto, the Court sits silent.

11. When the Attorney whom the Supreme Court of the United States Supreme Court cited as their sole footnoted authority in Cuyler v. Sullivan, 446 U.S. 335,344 (1980), a singular case which is the most fundamental ruling on the imperative duties of "retained" counsel; when the attorney who, as a private citizen achieved the addition of two years to the probation sentnece against Spiro Agnew, twice Vice President of the United States and who, effectively, culminated his overt pro-Arab-oil, anti-Israel public and private stance through the United STates District Court for the District of Baltimore, in 1976; when the attorney who succeeded in convincing the United States Court of Appeals for the Fifth Circuit that Fedore Fedorenko, subsequently deported to Russia and now, allegedly there sentenced to execution for Nazi collaboration as a Wartime Death Camp Guard in Treblinka, Poland's Concentration Camp which executed some one and a half million pri-

soners - that the U.S. District Court, Roettger, J., had, effectively usurped the prerogatives of the President by exercising the Dispensing Powers which exclusively reside in the Executive, by "forgiving" Fedorenko for his perjury in gaining admittance to the United States in 1950; when the attorney who, for the past two years has served, voluntarily as an Arbitrator in the Small Claims part of the Civil Court and for a year served at night as teacher to Sing Sing inmates in Criminal Law and Domestic Relations Law, as a volunteer; who has in his 24 years of active practice as an attorney assisted directly more than 100 persons, impoverished or otherwise in desperate straits, without one cent in fees as a matter of practice and simple morality -- is "convicted" without a trial, without an accusatory instrument, without any testimony under oath, without charges to which to respond, and sentenced to jail and imprisoned for the full 30-day term, as "found" in the "Order" of this Court; facially a "civil contempt"

Order, to wit, impregnated with civil contempt language and which orders that private attorneys-prosecutors be paid fines personally - when all this occurs before one of the most renowned State Courts in the United States, in the State of New York, we must all weep in shame.

12. Somehow, inexplicably, apparently this Court does not choose to be fully cognizant of the classic fundamentals intrinsic to this case. Clearly, had the meanest, dirtiest criminal committed a crime violating humanity, this Court would insure the civilized and Constitutional bulwarks were afforded such accused. Every Charter of Liberty, from the Magna Carta, to ancient Codes, to our earliest State and Federal Charters of Liberty would be invoked. This Court would speak courageously and firmly. Rights would not be trampled on.

13. Yet here an honorable and honored member of the Bar of this Court is subjected to the crunch of the oppressor, the Sovereign. The Court becomes a mere vehicle of spoilation

of liberties. This Court has been blind-sided. It could not have read the formidable petition and briefs duly submitted herein. Failure to deny one single allegation spawned-by-blood herein cannot be ignored, juridically buried. This is not merely a case of first impression.. Its Constitutional resolution must make it one of lasting impression. "Gideon's Trumpet" was one National clarion call. The momentous issues in this case can prove to be another, even more piercing resolve for Free Men in a Free and Decent Society.

14. For all the foregoing reasons this Court is urged to render justice herein and to vacate the previously entered unlawful judgment of conviction for Non-Summary Criminal Contempt.

15. Fullest reliance is also had on all the pleadings and proceedings heretofore herein submitted.

WHEREFORE, your affirmant respectfully urges this Court issue an Order Vacating the aforesaid Judgment of Conviction for Non-Sum-

mary Criminal Contempt, made in this Court on or about the 26th day of June, 1985, and entered in the Office of the Clerk of the Court on or about July 1, 1985, and for all other further and different relief as to this Court may be deemed just and appropriate in the premises.

DATED: December 1, 1986.

Respectfully submitted,

s/

SAM POLUR,Esq.
Attorney Pro Se
391 East 149 Street,Suite213
Bronx, New York 10455
(212) 402-6497

GEORGE SASSOWER
Attorney at Law
51 Davis Avenue
WHITE PLAINS, N.Y. 10605

914-949-2169

October 22, 1986

Gerald Stern, Esq.
Commission on Judicial Conduct
801 Second Avenue
New York, New York 10017

Michael A. Gentile, Esq.
Departmental Disciplinary Committee
41 Madison Avenue
New York, New York 10010

Re: Donald F. Schneider,Esq.
55 E. 52nd Street
New York, New York 10055

Michael J. Gerstein,Esq.
500 Fifth Avenue
New York, N.Y. 10110

Mr. Justice Alvin F. Klein

Gentlemen:

1a. One and one-half years ago, SAM Polur, Esq., was convicted, sentenced, and incarcerated for non-summary criminal contempt, without a trial, by Mr. Justice Alvin F. Klein, who unquestionably knew and knows that this act was beyond his jurisdictional power, a matter which every American jurist knows, and a matter known to all of the above, includ-

EXHIBIT "A"

ing Mr. Justice Alvin F. Klein.

b. Such conviction and incarceration was bawed on the uncorroborated accusatory affidavit of Donald F. Schneider,Esq., of April 11, 1985, which swore (p.6-7):

9. "At bar, Polur, the henchman for Sassower and Raffe, personally served the summons. Polur is the attorney of record for Raffe in a related action and for the past several months has accompanied Sassower on virtually all court appearances in cases where Sassower is disqualified, stepping in when Sassower is barred by the presiding justice from representing Raffe in violation of the Orders which disqualified Sassower. Polur was present at hearings at which Sassower sought vacature of the Permanent Injunction Order. See, for example, Exhibit "E".

10. When Polur served the summons at bar, I reminded him again of the provisions of the Permanent Injunction Order, as I had when he served a prior Summons only the week before also in violation of the Permanent Injunction Order. Polur acknowledged that Order)and took the position that he was merely a messenger and was thus not in violation of said Order)."

2a. The alleged incident took place on April 10, 1985 in the outer portion of the

Courtroom presided in by Hon. ETHEL B. DANZIG, and present at during all or part of such event was Senior Attorney, David S. Cook, Esq., of the Attorney General's Office, Michael J. Gerstein, Esq., and myself.

b. Mr. Polur was only present during a portion of the time.

3. The aforementioned statement of Mr. Schneider proliferates with misstatements and half-truths, in addition to the completely false accusation against Mr. Polur that he served a summons on Mr. Schneider.

4a. Schneider's moving papers, included (1) a copy of a summons which Mr. Schneider swore is the summons served upon him, and (2) a copy of a letter sent by Mr. Schneider that very same day.

b. I enclose copies of both such documents.

5a. I have repeatedly stated that if a summons was served on Mr. Schneider on that day, the one he annexed, is not that summons. (my emphasis)

b. I have repeatedly requested and demanded that Mr. Schneider produce the one he claims was served upon him, but he has repeatedly refused to do so, or reassert that the one annexed to his papers is the summons

that he claims was served upon him by Sam Polur,Esq.

c. Once again I demand that Mr. Schneider either produce the summons that he claims Mr. Polur served upon him, or acknowledge that the annexed summons is that summons!

6a. Instructively, the letter of the same date, by Mr. Schneider to Mr. Polur, which is also enclosed, does not even mention or accuse Mr. Polur of having served a summons on that day, a matter I find inherently suspect!

b. Incidentally, the prior summons mentioned by Mr. Schneider as having been served by Mr. Polur, Mr. Polur has always admitted to having served same, but was acquitted of committing any violation of any court order.

c. Indeed, after serving such prior summons, along with some appellate papers, while I was in an automobile, Mr. Polur did immedaitely afterward, in response to Mr. Schneider's remarks, tell me that he told Mr. Schneider, in effect, he was only serving as a messenger in giving him same. To repeat, where Mr. Polur admitted that he did serve such summons he was found not guilty!

7a. By affidavit, by affirmation, by correspondence to various courts, state and federal, I must have stated at least fifty (50) times that Mr. Polur did not serve any summons on Mr. Schneider on April 10, 1985, as he claims, and that if any service was made, it was made by me. (my emphasis)

b. I have on each occasion stated Mr. Schneider's accusation against Mr. Polur was false and perjurious, and except on one occasion, where he denied the accusation to be perjurious, but not false, he has consistently refused to reassert its veracity.

8a. I spoke to Mr. Cook, and while he does not remember who served the summons on Mr. Schneider, if a summons was served upon him, he clearly disclaims hearing any "sermon" given by Mr. Schneider to Mr. Polur or anyone else, at the time, as set forth in the affidavit of Mr. Schneider.

b. Mr. Gerstein, who joined in with Mr. Schneider, in having the criminal contempt order signed against Mr. Polur, although repeatedly challenged, has refused (to) identify such summons as the one served on Mr. Schneider, or corroborate in any respect such service.

9a. In open court, at the end of June,

1985, while Mr. Polur was still incarcerated, before Mr. Justice Alvin F. Klein, I stated that I served the aforementioned summons on Mr. Gerstein and Mr. Schneider, and that Mr. Schneider accusation was false and perjurious. I even gave some of the surrounding circumstances for such service.

b. Neither Mr. Schneider, nor Mr. Gerstein, took issue with my statements, at the time or at any time afterward, nevertheless Mr. Justice Alvin F. Klein did not release Mr. Polur (see Brady v. Maryland, 373 U.S. 83).

C. Mr. Justice Klein, Mr. Shneider, and Mr. Gerstein, can tell you the reason, in detail!

d. Simply they had a plan to employ the courthouse as a place to criminally extort and blackmail, and Mr. Polur's release might have disrupted such criminal plan.

10a. If this happened in South Africa or Russia there probably would be a protest registered here of some size.

b. Must I give this story to the foreign press before some decisive inquiry is made by the judicial establishment!

11a. More than one hundred fifty years ago:

"... James Buchanan [later to become the President of the United States] brought in a bill which became the Act of March 2, 1831. He had charge of the prosecution of Judge Peck and during the trial had told the Senate: 'I will venture to predict, that whatever may be the decision of the Senate upon this impeachment, Judge Peck has been the last man in the United States to exercise this power, and Mr. Lawless has been its last victim.'" (Nye v. United States, 313 U.S. 33,46).

b. Judge James Hawkins Peck, simply had a short fuse, and acted under the contempt law as it existed prior to 1831 in the apparent belief he had the power, and incarcerated the lawyer, Luke Edward Lawless, Esq. for only 24 hours. Nevertheless, articles of impeachment were approved.

c. At bar, Mr. Justice Alvin F. Klein, had actual knowledge that he had no such power nor authority, committed Mr. Polur to serve 30 days, in an attempt to advance criminal larceny, corruption, extortion and blackmail.

d. I speak very little to Mr. Polur, but even if I did know the man at all, I have very civilized ideas as to what disposition should be given to Mr. Schneider, Mr. Gerstein, Mr. Justice Alvin F. Klein, and all

those who try to conceal their crimes against civilized human values and the Constitution of the United States, in its most essential element.

e. I will do my duty, will you?

12a. By happenstance about two weeks ago, someone advised me of a published notice in the New York Times that the Receiver, Lee Feltman, Esq., six and one-half (6 1/2) years, after Puccini Clothes, Ltd., was involuntarily dissolved, was going to account on October 10, 1986 before Referee DONALD "pay-off" DIAMOND, in his non-public courtroom, wherein I, my daughter, and Mr. Polar(sic) are specifically excluded.

b. Mr. Schneider, upon communicating with him, advised me that a copy of such accounting was mailed to me one week prior thereto. Obviously, I did not believe him, especially since it is now three weeks since he purportedly sent same to me.

c. I think that if you demand a copy of such accounting, although by law a public document, it has the secrecy about it quite similar to the "Manhattan Project [the atom bomb]", you will find that the Feltman and Kreindler firms are nothing better than "felons with law degrees"; Puccini, is a "judicial fortune cookie", a great deal of

"hard core" judicial corruption, and Mr. Polur a victim, simply trying to do an honest job, as an attorney.

Respectfully,

s/
GEORGE SASSOWER

cc: Mr. Justice Alvin F. Klein
Donald F. Schneider, Esq.
Michael J. Gerstein, Esq.
Senior Attorney, David S. Cook, Esq.
Hon. Mary Johson Lowe 85 Civ. 5112[MJL]

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

C 106—Summons with Notice, Blank Cont'd.
Personal Service. 1-19

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SUPREME COURT : NEW YORK COUNTY

HYMAN RAFFE,

Plaintiff

against

XAVIER C. RICCOBONO, DONALD DIAMON, FELTMAN, KARESH & MAJOR, Esqs., and KREINDLER & RELKIN, P.C.

Defendant

Index No.

Plaintiff designates New York *County as the place of trial*

The basis of the venue is Defendant's place of business

Summons with Notice

Plaintiff resides at

County of

To the above named Defendant

You are hereby summoned *to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within* 20 *days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.*

Dated, April 10, 1985
Defendant's Address

GEORGE SASSOWER, Esq.
Attorney(s) for Plaintiff
Office and Post Office Address
2125 Hill Avenue,
Brooklyn, New York, 11234
718-444-3403

Notice: The nature of this action is violation of Judiciary Law, ~~deceit~~ obstruction of justice.

The relief sought is damages

Upon your failure to appear, judgment will be taken against you by default for the sum of $ ~~500,000~~ 10,000,000 *with interest from* 19 *and the costs of this action.*

Received in ECT
4/10/85
MTC

April 10, 1985

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel Polur, Esq.
35 Montgomery Street
New York, New York

Re: Puccini Clothes, Ltd.

Dear Mr. Polur:

I found your remarks to Judge Sullivan at the Appellate Division last Monday most disturbing. I recollect that you stated, in sum and substance, that you did not believe that Judge Gammerman's injunction Order dated January 23, 1985 (the "Permanent Injunction Order") was valid, that you would counsel Mr. Sassower not to obey the Order and that you would not obey that ORDER.

Similarly disturbing is that your prior conduct is consistent with that threat in that you directly violated that Order by serving a summons commencing an action entitled Hyman Raffe v. Feltman, Karesh & Major, which action was brought in violation of the Permanent Injunction Order.

I point out once again the express provisions of the Permanent Injunction Order which prohibit such conduct by you:

"ORDERED, that Hyman Raffe and

> George Sassower acting singularly, together or in conjunction with any person or entity or acting at the behest, direction or instigation of any person or entity, and all others acting in concert or cooperation with or acting at the behest, direction or instigation of either or both Hyman Raffe and George Sassower, are permanently enjoined and restrained from:
>
> filing or serving . . . any lawsuit . . . against Feltman, Karesh & Major. . ."

As a member of the Bar, you are no doubt aware that under the Code of Professional Responsibility, our firm has an obligation to report such conduct to the appropriate authorities.

We ask that you review the foregoing and seriously reconsider your position in this matter before journeying with George Sassower too far down the path from which there may be no return without serious consequences. I trust that your future con-

duct will be consistent with your professional obligations.

Please call me if you wish further to discuss this matter.

Very truly yours,

[no signature]
Donald F. Schneider

DFS:dj

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GEORGE SASSOWER,

Petitioner,

-against-

THE SHERIFF OF WESTCHESTER COUNTY,

Respondent.

86 Civ. 7403 (DNE)

GERSON, United States Magistrate:

In this habeas corpus petition brought pursuant to 28 U.S.C. §2254, petitioner George Sassower, pro se, challenges a term of incarceration (thirty days) imposed by the Supreme Court of the State of New York, Appellate Division, First Department, on a finding that petitioner was guilty of sixty-three counts of criminal contempt. In re Jerome Barr v. Sassower, ___A.D.2d ___, 503

EXHIBIT "B"

N.Y.S.2d 392 (1st Dept.1986). Sassower, an attorney, claims that his conviction and incarceration without a trial for non-summary criminal contempt violated his constitutional right to a trial. He also claims that he was subjected to double jeopardy and that the Referee, who made the contempt finding, and the Appellate Division, which imposed the sentence, were disqualified from acting. The petition was referred to me for report and recommendation by the Honorable David N. Edelstein, District Judge.

Petitioner's appeal to the New York Court of Appeals was dismissed "upon the ground that the order appealed from does not finally determine the proceeding...." In the Matter of Barr v. Sassower, Slip Op.No. 990 55D 101 (September 9, 1986). Although the Court of Appeals dismissed petitioner's appeal without reaching the merits, petitioner fairly presented to that Court the same factual and Federal constitutional claims he raises here. That the Court of Appeals declined the hear

the appeal from the criminal contempt finding which led to petitioner's incarceration, apparently because the underlying civil action was not final, does not foreclose federal review of that incarceration, which is presently ongoing. The State's highest court was given the opportunity to address the claim. Whether or not it chose to do so, the comity rationale of the exhaustion requirement has been met. I find that petitioner Sassower has exhausted his state remedies. Daye v. Attorney General, 696 F.2d 186, 191 (2dCir. 198_)(en banc).[1/] For the reasons set forth below, I recommend that the petition for a writ of habeas corpus be granted.

The Special Referee relied upon the following orders: On February 1, 1982, New York State Supreme Court Justice Sinclair issued an Order disqualifying petitioner Sassower, an attorney, from appearing as counsel for a Mr. Raffe in "all other actions or matters wherein George Sassower, Esq. represents an interest

adverse to... Eugene Dann, Robert Sorrentino and Puccini Clothes, Ltd." Report of the Special Referee (Report), p.4 (Annexed as Exh.B to Weissman Afft.) quoting Justice Sinclair's Order. Justice Ira Gammerman issued an Order on January 23, 1985, permanently enjoining petitioner and Hyman Raffe from "filing or serving or attempting to intervene in or initiate, in any court, tribunal, agency or other forum of this State, any lawsuit, proceeding, investigation or other adversary matter, and from making or filing a complaint, grievance or correspondence with a professional disciplinary or grievance committee the subject matter of which arises out of or relates to" nine categories enumerated by Justice Gammerman which collectively covered all parties, entities and litigants involved in the multitude of actions previously instituted by either petitioner of Hyman Raffe. Annexed as Exh. D to Weissman Afft.[2/]

On January 30, 1985, Lee Feltman, the

court-appointed receiver for Puccini Clothes, Ltd., brought a motion to punish petitioner for 64 counts of criminal contempt of court on the grounds that petitioner had repeatedly violated the Orders of Justices Sinclair and Gammerman. By Order of Supreme Court Justice Martin Evans, dated April 5, 1985, the Receiver's motion was referred to Special Referee Donald Diamond. According to Referee Diamond, petitioner's "not guilty" defense raised in his Affidavit in Opposition to the Motion was "tantamount to a general denial of the allegations contained in the petition...." Report, pp.14-15. The Referee found that petitioner's "not guilty" defense "does not create a disputed issue requiring a hearing." Report, p.15. According to Referee Diamond, "[n]o hearing" was"held for a confluence of reasons." Report, p.5. Petitioner failed to allege any facts "disputing the detailed charges made by movant"; "the violations of the orders alleged to constitute contempt are matters that are documented by the filing

of court papers and matters that appear on the record, in court proceedings"; and petitioner served Referee Diamond "with an answer to the complaint" in a proceeding pending before the Departmental Disciplinary Committee in which petitioner asserted that "he has the right to ignore the disqualification order...." Report, pp.7, 8, 9. Based on this, Referee Diamond found that "[t]he complaint made by the receiver in the disciplinary proceeding parallels those raised on this motion. Mr. Sassower's answer to that complaint establishes there is no need to hold a hearing herein." Report, p.9.

Thus, without holding a trial or an evidentiary hearing, Referee Diamond found petitioner Sassower guilty of 63 counts of criminal contempt. He recommended that a fine of $250.00 for each offense he imposed and that petitioner be confined for a period of thirty days. Justice Evans adopted the Referee's findings of guilt but denied, with leave to renew, the Referee's recommendation that a

fine and jail sentence be imposed. On January 21, 1986, Justice Evans denied the Receiver's renewed motion to confirm the Referee's report and to punish petitioner for contempt. The Appellate Division, First Department, reversed Justice Evan's denial of the Receiver's motion to renew and modified Justice Evans Order of November 22, 1985, "only to the extent of imposing a sentence of thirty days incarceration and directing that a warrant of commitment issue forthwith...." In re Jerome Barr, supra, 503 N.Y.S.2d at 392. Petitioner was released on his own recognizance until August 6, 1986 when he was ordered to surrender himself.

After serving three days, petitioner's incarceration was temporarily stayed for medical reasons by an Order of the Appelalte Division. On September 25, 1986, the stay was lifted. While released from custody petitioner filed the present habeas corpus petition.[3/] Initially, respondent argued that petitioner was not in custody, a prerequisite

for the determination of a habeas corpus petition filed pursuant to 28 U.S.C. §2254. In an Order issued on November 5, 1986, I found that the limitation on petiioner's freedom imposed by the outstanding incarceration order met the "in-custody" requirement of 28 U.S.C. §2254. In a Rule 4 Order, also issued that day, I directed that the petition be served on the Sheriff of Westchester County and the Attorney General of the State of New York.[4/] The respondent was directed to answer on the merits by November 19, 1986.

On November 19, 1986, petitioner was taken into custody to complete his term of incarceration and the answer of the sheriff of Westchester County was filed. A hearing was held on November 24, 1986. The Sheriff of Westchester County, the ...(unclear) District Attorney[5/] were represented at the hearing. Pursuant to a writ ad testificandum, petitioner Sassower was produced from the Bronx House of Detention, where he is presently incarcerated.

"Criminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonement or both. [C]onvictions for criminal contempt are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same." Bloom v. Illinois,391 U.S. 194,201 (1968). Although certain factual situations may warrant procedures in a criminal contempt proceeding that are distinct from the ordinary action, e.g., United States ex rel. Vuitton v. Klayminc, 592 F.Supp. 734 (S.D.N.Y. 1984), aff'd with opinion, 780 F.2d 179 (2d Cir.1985), Bloom v. Illinois has"left no doubt that contempt defendants are entitled to all fundamental procedural protections...." 592 F.Supp. at 741. Such fundamental procedures include a finding of guilty on the grounds that the evidence established, beyond a reasonable doubt, In re Weiss, 703 F.2d 653, 662 (2dCir. 1983), that the "requisite intent was present." In re Irving, 600 F.2d 1027, 1037 (2dCir.1979).

Every Appellate Division in the State of New York has recognized the significance of Bloom. N.A. Development Co., Ltd. et al. v. Carolyn Jones et al., 99 A.D.2d 738, 242 (1stDept.1984); Holtzman v. Beatty, 99 A.D.2d 79, 82 (2dDept.1972; State University of New York v. Denton, 35 A.D.2d 176,181 (4thDept.1970). In Ingraham v. Maurer, supra, 39 A.D.2d at 259, the Court acknowledged, after citing Bloom, "that a criminal contempt proceeding is a criminal proceeding to which the basic fundamentals are applicable to the same extent as in any other criminal trial. While the Bloom case was directed solely at the issue of the right to a jury trial, it, nevertheless, equates the contempt proceeding with an ordinary criminal proceeding." In N.A. Development Co., Ltd., supra, 99 A.D.2d at 242, the Appellate Division, First Department, citing Bloom, acknowledged that "[c]riminal contempt must apparently be proved beyond a reasonable doubt." Accord, County of Rockland v. CSEA, 62 N.Y.2d 11, 14 (1984).

I find that the procedures afforded to petitioner prior to the Appellate Division order of incarceration did not comport with the mandates of the Fourteenth and Sixth Amendments of the United States Constitution. It is clear from the Referee's report that his recommendation was based entirely on the papers before him. Concededly, neither a full evidentiary hearing nor a public trial was afforded petitioner prior the Referee's findings of guilt. Furthermore, there is no indication that the determination of guilt was based on a finding that the evidence proved petitioner's guilt, including the requisite intent, beyond a reasonable doubt. The reasons given by the Referee as justification for the conclusion that neither a hearing nor a trial as warranted failed to take into consideration the constitutional requirements of non-summary criminal contempt proceedings.

The receiver contends that petitioner's reliance on Bloom v. Illinois is misplaced because petitioner did not request a jury trial. The receiver has misconstrued both

petitioner's claim and the significance of Bloom. Petitioner correctly relies on Bloom as support for his claim that a conviction for non-summary criminal contempt without a trial of any kind is unconstitutional.

The receiver's reliance on Taylor v. Hayes, 418 U.S. 488 (1974), as support for the assertion that a State can punish someone for non-summary criminal contempt without any trial when the term of incarceration imposed does not exceed six months misconstrues the holding in Taylor. Taylor involved a conviction for criminal contempt where the contemptuous acts occurred in open court during the course of a criminal trial. 418 U.S. at 489. At the conclusion of the trial, Taylor was sentenced to a jail term of four and one-half years for his contemptuous acts. 418 U.S. 489. While his appeal was pending, the sentence was reduced to six months. The Supreme Court held that, after a conviction for criminal contempt, the State may reduce a sentence to six months

or less rather than retry the contempt charge with a jury. 418 U.S. at 496.

The Court in Taylor also held that, even where the contempt occurs in the courtroom in the presence of the judge, the justification for summary action is less cogent when final adjudication and sentence are postponed until after trial. Where the contempt occurs before the eyes of a judge, a full-scale trial might not be necessary, said the Court, but it found that the procedures invoked against Taylor were Constitutionally infirm. Thus, Taylor expanded the protections accorded in summary contempt cases. Nothing in Taylor suggests that where, as herein, a non-summary contempt is charged, no trial is required unless a term of six months imprisonment is imposed.

The receiver's suggestion that, because the contempt proceeding was brought under the Judiciary Law (Section 750 et seq.) and not under the Penal Law, it was civil in nature (and therefore no trial was needed) is rejected.

The receiver himself characterized his motion as one "for an order punishing George Sassower for 64 counts of criminal contempt of court." Notice of Motion dated Jan. 30, 1985. The referee and the Appellate Divison also identified the proceeding as one for criminal contempt. There is no basis for now treating the contempt as civil.

Since Sassower was deprived of his right to a trial prior to being found guilty of criminal contempt, I recommend that the petition for a writ of habeas corpus be granted. Copies of this report and recommendation are today being served upon petitioner and upon all counsel who appeared at the hearing. They are advised that any objections to this report should be served and filed, with a courtesy copy hand-delivered to Judge Edelstein's chambers and a copy to me, by 10 a.m. Wednsday, November 26, 1986. See United States v. Barney, 568 F.2d 234, 236 (9th Cir.1978) (less than ten days to object to Magistrate's report permitted where circumstances warrant shortened time

period). The parties were advised at the hearing of what my report would recommend and they will be advised telephonically that they can pick up a copy of this report today.[6/] Mitchell Sassower, Esq. has agreed to pick up a copy of the report and recommendation and deliver it to petitioner.

Respectfully submitted,

s/
NINA GERSHON
United States Magistrate

Dated: New York, New York
November 24, 1986

FOOTNOTES

1/ Petitioner's writ of habeas corpus in the New York Supreme Court was dismissed on the ground that "there was no basis for the granting of the within writ...." Sassower v. Sheriff of Westchester County,Slip Op. No. 13503-86 (August 4, 1986) (annexed as Exh. F. to Weissman Afft.). However, having raised his claim to the State's highest court, there was no requirement - for exhaustion purposes - that Sassower pursue his claim further in the State courts.

2/ In Raffe v. John Doe, 619 F.Supp. 891, 899 (S.D.N.Y. 1985), petitioner was permanently enjoined from commencing further actions in any federal court arising out of or related to the Puccini dissolution of receivership.

3/ Petitioner's proposed Order to Show Cause seeking a stay of his arrest and incarceration pending adjudication of his recently filed habeas corpus petition was referred to me. I declined to sign the order in a Memorandum dated September 29, 1986. Petitioner then made a motion seeking a stay of his arrest. That motion was denied in an Order dated Novem-

ber 5, 1986, which was adopted by Judge Edelstein on November 19, 1986.

4/ courtesy copy of the petition, the Rule 4 Order and the Order denying a stay were ordered delivered to the Clerk of the Appellate Division, First Department.

5/ On or about November 17, 1986, petitioner applied for an order directing the New York District Attorney and the United States Attorney and/or an independent attorney appointed by the Court to intervene and represent the respondent, Westchester County. Although that motion bore a return date of November 26, 1986, the District Attorney appeared at the hearing as a friend of the court.

6/ Only the receiver addressed the merits of this petition. The Sheriff of Westchester County chose not to address the merits of the petition either in the papers that were filed or at the hearing. The Attorney General's Office filed no papers and at the hearing the Assistant Attorney General indicated that that office has "no interest" in this habeas corpus petition.

SUPREME COURT OF THE STATE OF NEW YORK
INDIVIDUAL A

At the Courthouse thereof, 60 Centre St., NY, NY 10007

Present:
Hon. Martin B. Stecher, Justice.

HYMAN RAFFE,

- against -

XAVIER RICOBONO, et al.

Upon the foregoing papers this Motion is marked "off" calendar for failure to answer the calendar.

Dated: 1/7/87

/s/
J.S.C.

MDAI

County Clerk's No. 9522/85

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SUPREME COURT OF THE STATE OF NEW YORK, INDIVIDUAL ASSIGNMENT PART _____

at the Courthouse thereof, 60 Centre Street, New York, New York, 10007.

Present: Hon. MARTIN B. STECHER Justice.

1-SMB-REFERR
2-KAF-MOTNDE

Hyman Raffe

386

— against —

X Amer Riccobono, et al

SUPREME COURT STATE OF NEW YORK RECEIVED JAN 12 1987 SPECIAL TERM PART ONE

MARKED OFF

The following papers numbered 1 to _____ read on this motion

	PAPERS NUMBERED
No. _____ on Calendar of _____	
Notice of Motion - Order to Show Cause - and Affidavits Annexed	
Answering Affidavit	
Replying Affidavit	
Affidavit	
Affidavit	
Pleadings — Exhibit	
Stipulation — Referee's Report — Minutes	
Filed Papers	

FILED FEB 4 1987 COUNTY CLERK'S OFFICE NEW YORK

Upon the foregoing papers this motion is marked "off" calendar for failure to answer the calendar

Dated 1/7/87

J.S.C.

Briefs: Plaintiff's _____ Defendant's _____ Petitioner's _____ Respondent's _____ Relator's _____

Briefs _____

MOAT

County Clerk's No. 9522 85

Spec I Liber _____ Line 004 19__

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14

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

HYMAN RAFFE, INDEX #:9522/85
Plaintiff,
-against-
XAVIER RICCOBONO, DONALD DIAMOND, FELTMAN, KARESH & MAJOR, ESQS. and KREINDLER & RELKIN, P.C.,
Defendants.

HYMAN RAFFE,
Plaintiff,
-against-
KREINDLER & RELKIN, P.C., HON. WALTER M. SHACKMAN, "John Doe" and "John Roe", names fictitious, persons intended to be those who communicated with the Court ex parte,
Defendants.

HYMAN RAFFE,
Plaintiff,
-against-
DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, ESQ., KREINDLER & RELKIN, P.C., CITIBANK,, N.A., AND JEREOME H. BARR, Esq., Individually and as Executor of the Will of Milton Kaufman,
Defendants.

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE, that upon the

PETITION FOR ERROR CORAM NOBIS

annexed affirmation of SAM POLUR, Esq., duly sworn to on May 5, 1986, the Supplemental Affidavit of SAM POLUR, Esq., duly sworn to on May 14, 1986, the Memorandum of Law and Exhibits annexed thereto, and upon all other proceedings, pleadings and papers heretofore had,served and/or filed herein, the undersigned will move this Court, at a Term, Part 11, Room 422, Justice Alvin F. Klein, J.S.C., to be held at the Courthouse, 60 Centre Street, City, State and County of New York, on the 2nd day of June 1986, at 2:00 p.m. in the afternoon of that day or as soon thereafter as counsel can be heard, for an Order pursuant to Criminal Procedure Law Section 440.10subds.(1)(a)(b)(g)(h), vacating so much of the Judgment and Order made in the Supreme Court, by Hon. Alvin F. Klein, Supreme Court Justice, on or about June 26, 1985, and entered in the Office of

the Clerk of the County of New York, Supreme Court on or about July 1, 1985, finding SAM POLUR, Esq. guilty of Criminal Contempt, allegedly pursuant to Judiciary Law Section 750 et seq., and sentencing him to thirty (30) days imprisonment and monetary punishment in thesum of Two Hundred Fifty ($250.00) Dollars to be paid to defendant Law Firm of FELTMAN, KARESH & MAJOR, Esqs.; and for such other further and different relief as to this Court may be deemed just and proper in the premises, including vacature of the entire said Order of July 1, 1985 by the said Justice KLEIN.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR 2214(b), answering papers, if any, are required to be served so as to be received by the undersigned at least seven (7) days prior to the return date of this Motion.

DATED: May 14, 1986.
Bronx, New York 10455

s/
SAM POLUR
Attorney Pro Se
391 East 149 Street,Suite213
Bronx, New York 10455
(212) 402-5394

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK INDEX #:9522/85

HYMAN RAFFE,

Plaintiff,

-versus-

XAVIER RICCOBONO, DONALD DIAMOND, FELTMAN, KARESH & MAJOR, Esqs., and KREINDLER & RELKIN, P.C.,

Defendants.

HYMAN RAFFE,

Plaintiff,

-versus-

KREINDLER & RELKIN, P.C., HON. WALTER M. SHACKMAN, "John Doe" and "John Roe", names fictitious, persons intended to be those who communicated with the Court ex parte,

Defendants.

HYMAN RAFFE,

Plaintiff,

-versus-

DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, ESQ., KREINDLER & RELKIN, P.C., CITIBANK, N.A., and JEROME H. BARR, ESQ., Individually and as Executor of the Will of Milton Kaufman,

Defendants.

AFFIRMATION IN SUPPORT
OF MOTION BY ATTORNEY,PRO SE

SAM POLUR, Esq., duly licensed Attorney

State of New York, respectfully affirms pursuant to CPLR 2106 and penalties of perjury, in support of the Motion herein, as follows:

(1) I herewith respectfully state that at all material times I have personally been fully apprized of every major element in this proceeding inasmuch as I have been the Attorney-Principal throughout.

(2) I fully know of,herewith adopt as though fully set forth hereinafter the entire Memorandum of Law and Motion annexed and duly submitted.

(3) This Affirmation, additionally, is written to stress the fullest adherence to Criminal Procedure Law (hereinafter "CPL") Sec. 440.10 and the following major subdivisions thereof: CPL §440.10(1)(a)(b)(g)(h). The reasons follow:

A. The Court did not have jurisdiction of the person of the "accused" or of the proceeding. "Criminal Contempt" is a Special Proceeding pursuant to Article "4"

Inasmuch as the Court did not have jurisdiction of the subject matter where the "motion" herein was brought on in the form of a mere action. The Index Number of the case reveals it was that of an existing case where the name of Sam Polur did not appear. The "Criminal Contempt" finding was therefore based on a nullity. This was a jurisdictional lapse.

The Court below failed to have jurisdiction of the person of Sam Polur, who was merely acting as an attorney at law in arguing a motion (opposing same). Sam Polur was nowhere named as a party and was not a party to any proceeding before the Court! This was a jurisdictional lapse.

All the above are pursuant to Sec. 440.10 CPL, subdivision (a).

B. The private attorneys, Feltman, Karesh & Major, Esqs., defendants in the named action at law before the Court, violated Subdivision (b) of §440.10 CPL, in that their "Criminal Contempt" Order was procured by fraud, misrepresentation as an active "prosecutor" at all times, seeking material gain and profit of a private nature in a case that dealt strictly with the Sovereign as the "PEOPLE" vs. Sam Polur, which had to be found in a "Criminal Contempt" proceeding. Bloom v. Illinois,391 U.S. 194(1967).

The private attorneys, Feltman, Karesh & Major, Esqs., defendants in the named action at law before the Court, violated subdivision (b) of §440.10 CPL, in that their "Criminal Contempt" Order was procured without

a hearing and testimony under oath, without an accusatory instrument before the Court or served on Sam Polur, without according him a Jury Trial for this "serious crime" (see, e.g., Bloom v. Illinois,supra), without confrontation, without the right to cross-examine testimony of hostile witnesses. The private attorneys, while openly seeking "public" fines to be paid to themselves, deprived Sam Polur of the most basic rights adhering to an American facing criminal penalties.

The private attorneys, Feltman, Karesh & Major, Esqs., defendants in the named action at law before the Court, violated subdivision (b) of § 440.10 CPL, in that their "Criminal Contempt" Order was procured before this Court, Hon. Alvin F. Klein, Justice, without a findng that the alleged "disobedience"

of Sam Polur was to a "lawful" Mandate of the Court, pursuant to Judiciary Law Sec.750(a)(3)(4), indispensible to jurisdiction of the Court.

(C) New evidence has been discovered subsequent to the entry of judgment, which was not in existence at the time of sentence, see CPL Sec.400.10(1)(g). But, more fundamentally, the judgment herein was obtained in violation of the most fundamental rights of Sam Polur, as guaranteed by United sTates and New York State Constituitons.

There was no jurisdiction of the subject matter. There was no jurisdiction of the person. Due Process and Equal Protection of the Law were most egregiously violated, in that there was no accusatory instrument, there no trial or hearing, there was no jury trial

despite it being a "serious crime" charged, there was no evidence introduced, there was no proof beyond a reasonable doubt (IN FACT AND IN TRUTH THERE WAS NO PROOF WHATSOEVER INTRODUCED IN THIS CRIMINAL CONVICTION "CASE"!), there was no testimony under oath. The vilest murderer or sexual pervert has, automatically, a full panoply of rights and civilized protections accorded him as being "innocent" in the eyes of the law until proven guilty. This was not accorded Sam Polur, a respected and recognized Constitutional scholar and attorney at law with an impeccable record since admission to the Bar in 1963.

Based on all of the above, and the petition with its fulsome and extaordinary delineation of affirmative rights of Sam Polur that were egregiously violated in a statutory and

Constitutional sense, it is respectfully urged this Court grant the relief sought herein, and that it grant all other and different relief it deems just and appropriate in the premises.

DATED: May 5, 1986.

s/

SAM POLUR
Attorney Pro Se
391 East 149 Street,
Suite 213
Bronx, New York 10455
(212) 402-5394

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

INDEX #: 9522/85

HYMAN RAFFE,

Plaintiff,

-against-

XAVIER RICCOBONO, DONALD DIAMOND, FELTMAN, KARESH & MAJOR, ESQS., and KREINDLER & RELKIN, P.C.,

Defendants.

HYMAN RAFFE,

Plaintiff,

-against-

KREINDLER & RELKIN, P.C., HON. WALTER M. SCHACKMAN, "John Doe" and "John Roe," names fictitious, persons intended to be those who communicated with the Court ex parte,

Defendants.

HUMAN RAFFE,

Plaintiff,

-against-

DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, ESQ., KREINDLER & RELKIN, P.C., CITIBANK, N.A., and JEROME H. BARR, ESQ., Individually and as Executor of the Will of Milton Kaufman,

Defendants.

SUPPLEMENTAL AFFIRMATION IN SUPPORT OF MOTION BY ATTORNEY PRO SE

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SAM POLUR, Esq., duly licensed Attorney at Law, State of New York, respectfully affirms pursuant to CPLR 2106 and penalties of perjury, in support of the Motion herein, as follows:

(1) I herewith respectfully state that at all material times I have personally been fully apprized of every major element in this proceeding inasmuch as I have been th Attorney-Principal throughout.

(2) I fully know of and hereith adopt as though fully set forth hereinafter the entire petition annexed and duly submitted.

(3) This Affirmation, additionally, is written to bring to this Court's attention material and extremely relevant facts learned by this movant as recently as May 13, 1986; which facts are germane and crucial to this Court's ability to make a just and lawful determination of this Motion. They are as follows:

A. FELTMAN, KARESH & MAJOR, ESQS., BY way of Donald F. Schneider, Esq., filed the Motion to hold SAM POLUR, Esq. in Criminal Contempt of Court with full knowledge that SAM POLUR had not served the summons in question.

B. FELTMAN, KARESH & MAJOR, Esqs., submitted as an exhibit in support of their Motion the same Summsons that Michael J. Gerstein, Esq., attorney representing KREINDLER & RELKIN, P.C., claimed and affirmed was served upon him personally in court by George Sassowere, Esq., on April 10, 1985; which Summons gave rise to KREINDLER & RELKIN'S Motiot to hold HYMAN RAFFE and GEORGE SASSOWER, Esq., in CRiminal Contempt of Court.

C. FELTMAN, KARESH & MAJOR never produced the alleged Summons served upon them by SAM POLUR, Esq. They instead submitted, as Exhibit "B", the Summons that George

Sassower, Esq. had served upon MICHAEL J. GERSTEIN, Esq., to support their motion to hold Sam Polur in Criminal Contempt, dated April 11, 1985.

D. The Summons annexed as "Exhibit 'B'" to FELTMAN, KARESH & MAJOR'S April 11, 1985 Motion to hold SAM POLUR, Esq., in Criminal Contempt bears the initials of MICHAEL J. GERSTEIN, Esq. (MJG), with a notation -- Rec'd in Ct. 4/10/85 MJG ----.

E. This clearly demonstrates the intrinsic fraud perpetrated on the Court and on SAM POLUR, Esq., in procuring an unlawful criminal conviction against SAM POLUR, Esq.

F. On page 5 of KREINDLER & RELKIN'S ("K&R") April 30, 1985 Motion to hold Raffe and Sassower in Criminal Contempt, Michael J. Gerstein, Esq. states that "a bare summons" (co0y annexed as Exhibit "B") was served on him on April 10, 1985 by George

Sassower, Esq. The summons has M.J.G., the initials of Michael J. Gerstein, Esq., on it.

G. FLETMAN, KARESH & MAJOR (FK&M), by Donald F. Schneider, Esq., annexed the exact same summons to their Motion to hold SAM POLUR, Esq. in criminal contempt. They also filed the same summons, with Michael J. Gerstein's initials on it, as Exhibit "E" in their affidavit in opposition to an Application for a Stay of Justice Klein's Order, dated July 3, 1985. This again was the same summons that George Sassower had served on K&R.

H. Michael J. Gerstein conclusively demonstrates that the summons in question was served upon him (Gersterin) by Sassower, and not upon Schneider by Polur. (See Gerstein's Affidavit in Oppositiion to Raffe's Motion to Reargue, dated August 8, 1985, page 7, par. 7; and Gerstein's

Affidavit in Opposition to an Application for a Stay of Justice Klein's Order, page 6, dated July 3, 1985, mentioning Exhibit "C"). AGain the initials of Michael J. Gerstein, Esq. is on the summons, proving that the particular summons in question was served on K & R, not on FK&M.

I. Additionally, Hyman Raffe and Ira Postel, Esq., in their Affidavits in Support of a Motion to reargue clearly and unequivocally state that the summons in question which commenced the action was served by George Sassower.

J. Your movant is also in receipt of a recent communication from Edward Weisman, Esq., for Feltman, Karesh, Major & Farbman, Esqs., to the effect that the Hon. Ira Gammerman, J.S.C.,had as recently as March 11, 1986, Ordered that the instant proceeding by SAM POLUR, Esq., could not be maintained unless permission is granted

by Justice Gammerman.

K. This is a patent falsehood and another futile attempt to confuse and mislead the Court. The Order of Justice Gammerman, as this movant reads it, precludes George Sassower, Esq., and anyone acting as his agent, on his behalf, etc., from filing motions, lawsuits, etc. Nowhere in the Order does it mention SAM POLUR. It indeed does not preclude SAM POLUR from acting "defensively" ON HIS OWNbehalf, or to clear his NAME that has been dragged through the mud by F,K&M.

L. Furthermore, the only reason this movant brought this Motion originally under Index No. 8749 of '85 is because that was the only Notice of Motion that was ever served upon SAM POLUR, despite the fact that F,K&M filed an Affidavit of Service that Polur was sered. (see April 19, 1985 affidavit of Schneider).

M. Morevoer, it wasn't until this movant perused the file in the action entitled Index No. 9522 of 85 that he discovered the Notice of Motion dated April 11, 1985, which brought on the Motion to hold SAM POLUR, Esq. in criminal contempt.

N. Even on oral argument before this Court SAM POLUR only conceded to serving one (1) summons, and that was on April 1, 1985; a summons, incidentally, that he knew not the contents of. Nevertheless, Justice Saxe, J.S.C., refused to hold SAM POLUR, Esq. in criminal contempt for serving that summons because there was no proof beyond a reasonable doubt that POLUR served it in"wilfull" disobedience to a lawful mandate.

O. Surely there can not be a finding of proof beyond a reasonable doubt that POLUR served the summons in this action in in wilful disobedience of a lawful mandate

of the Court because the summons within was not served by POLUR. F,K&M knowingly, deliberately and fraudulently placed before a Justice of the Supreme Court of the State of New York false and misrepresenting statements in regards to Mr. POLUR'S conduct, and placed before the Court a document that they knew had been served upon another law firm by a party other than SAM POLUR, Esq.

P. In further support of this movant's position this Court need only look at the Affidavits of attorney George Sassower, Esq., dated November 23, 1985, at pp. 15 & 16, and December 28, 1985, pp. 8 & 9, wherein he alerts the Court to the fact that FK&M placed false and perjurious statements and documents before the Court in regrds to Polur's alleged criminal conduct. POLUR never served the summons in question and has been falsely and unjustly convicted and imprisoned.

Q. Finally, with reards to FK&M's unethical conduct in these proceedings, a letter was sent to your Honor, Justice Klein, by Donald F. Schneider, Esq. for FK&M, dated May 30, 1985, the day after oral argument on their motion to hold SAM POLUR, Esq. in criminal contempt of Court. This communication, as far as this movant is concerned, was an unlawful "Ex Parte" communiction with the Court where POLUR never received a copy fo said letter, as evidenced by the (cc:) notation on it, and never had an opportunity to respond. It can only be assumed that said letter was used to wrongly influence this Court's decision in its findinds on Criminal Contempt. Surely, personal service on a defendant of every document in a Criminal Contempt proceeding is manatory.

R. No previous application has been made before this Court or any other for the

relief demanded herein except for this same motion noticed for May 19, 1986, which was returned because of the wrong index number.

WHEREFORE, for the foregoing reasons it is respectfully urged that this Court grant therelief sought herein, and that it grant all other, different and further relief it deems just and proper in the premises.

DATED: May 14, 1986
Bronx, New York 10455

s/
SAM POLUR
Attorney Pro Se
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(212) 402-5394

TO: FELTMAN, KARESH, MAJOR & FARBMAN,Esqs.
55 East 52nd Street
New York, New York 10055

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No. 9522/85

HYMAN RAFFE,

Plaintiff,

-against-

XAVIER RICCOBONO, DONALD DIAMOND, FELTMAN, KARESH & MAJOR, ESQS., and KREINDLER & RELKIN, P.C.,

Defendants.

HYMAN RAFFE,

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-against-

KREINDLER & RELKIN, P.C., HON. WALTER M. SHACKMAN, "John Doe" and "JOHN ROE", names ficticious, persons intended to be those who communicated with the Court ex parte,

Defendants.

HYMAN RAFFE,

Plaintiff,

-against-

DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, ESQ., KREINDER & RELKIN, P.C., CITIBANK, N.A., and JEROME H. BARR, ESQ., individually and as Executor of the Will of Milton Kaufman,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR VACATURE OF ORDER AND JUDGMENT OF "CRIMINAL CONTEMPT" PURSUANT TO CPL Sec. 440.10(a)(b)(g)(h)

SAM POLUR,Esq.
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To: Feltman, Karesh,Major
and FARBMAN, ESQS.
55 East 52nd Street

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Point 1

THE COURT BELOW DID NOT HAVE JURISDICTION OF THE SUBJECT MATTER OF THE PROCEEDING DUE TO THE FAILURE OF THE DEFENDANT IN THIS ENTITLED COURSE OF ACTION TO PROCEED ACCORDING TO THE JURISDICTIONAL REQUIREMENTS FOR INITIATING A "SPECIAL PROCEEDING"

Petition for an order adjudicating a person guilty of criminal contempt in a civil action is a "civil special proceeding" requiring the movant/petitioner to acquire a completely new index number, independent of the underlying civil action, and styling the Notice of Petition or Order to Show Cause to reflect the exact parties involved in said special proceeding. Civil Practice Law and Rules, § 401 et seq.; Douglas v. Adel, 269 N.Y. 144, 146; Bd. of Education v. Zeluck, 60 Misc.2d 1090, 1093.

Section 401 of the CPLR is instructive:

> Parties. The party commencing a special proceeding shall be styled the petitioner and any adverse party the respondent. After a proceeding is commenced, no party shall be joined or interpleaded and no third-party practice or intervention shall be allowed, except by leave of court.

As are Sections 402 and 403:

> Pleadings. There shall be a petition, which shall comply with the requirements for a complaint in an action...
>
> Notice of Petition; service; order to show cause.
>
> (a) Notice of Petition. A notice of petition shall specify the time and place of the hearing of the petition and the supporting affidavits, if any, accompanying the petition.
>
> ...
>
> (c) Manner of service. A notice of petition shall be served in the same manner as a summons in an action.

Furthermore, Judiciary Law, §750,subd. A., par. 7, in pertinent part provides that "Application to punish the accused for a contempt specified in this subdivision may be made by notice of motion or by order to show cause, and shall be made returnable at the term of the Supreme Court at which contested motions are heard.."

"Without a jurisdictional underpinning a judgment may not stand." Royall v. Royall, 481 N.Y.S.2d 361, 105 A.D.2d 632 (1st Dept. 1984). "Order or judgment of a court lacking jurisdiction of the subject matter is void, and objection to court's jurisdiction in such case may be taken at any stage of the action, including on appeal." Marine Midland Bank, N.A. v. Bowker, 89 A.D.2d 194, 456 N.Y.S.2d 243, affd. 59 N.Y.2d 739, 463 N.Y.S.2d 441, 450 N.E.2d 247.

In view of these substantial deviations from the law the court below never had proper jurisdiction of the matter herein, the result being an unlawful conviction of criminal contempt against this movant, SAM POLUR, Esq.. The judgment must be vacated in all respects as against SAM POLUR.

Point 11

THE COURT BELOW DID NOT HAVE JURISDICTION OF THE PERSON OF SAM POLUR, THEREFORE SAM POLUR WAS WRONGFULLY CONVICTED AND UNLAWFULLY IMPRISONED FOR CRIMINAL CONTEMPT

A) SAM POLUR WAS NOT A NAMED PARTY TO THE "SPECIAL PROCEEDING" AND, AS SUCH, THE COURT NEVER HAD NOR LAWFULLY ACQUIRED JURISDICTION OVER THE PERSON OF SAM POLUR,Esq.

The Notice of Motion filed by Donald F. Schneider, Esq., for the named defendant Feltman, Karesh & Major, was captioned:

_____X

HYMAN RAFFE, Plaintiff, :

-against- :

FELTMAN, KARESH & MAJOR, :

Defendant. :

_____X

See exhibit "A", hereto annexed.

The law is well settled that a court acquires jurisdiction "only" over the person of a party named in an action or special proceeding; that being accomplished by proper service on and notice to such a "named party."CPLR 103 et.seq, 401 et. seq.; CPLR 103 et seq; 401 et seq.;

; In re Clark's Will, 3 N.Y.2d 364.

In the instant proceeding the name of Sam Polur did not appear anywhere in the caption or on the face of the Notice of Motion. Under such circumstances Sam Polur was not a named party and was not lawfully subject to the jurisdiction of this Court over his person. The Notice of Motion was jurisdictionally and fatally defective on its fact. Consequently, any actions taken or orders made whereby this Court was in gross violation of Sam Polur's constitutionally protected right to not be deprived of his liberty without due proess of law under the State and Federal Constitutions, his right to not have his constitutional privilages and immunities abridged pursuant to the Due process clause of the Fourteenth Amendment to the U.S. Constitution and his rights under the Equal Protection Clause of the U.S. Constitution.

As a person not a named party to this "special proceeding", Sam Polur was unlawfully adjudicated guilty of criminal contempt and wrongfully imprisoned.

Jurisdiction must be expressed over a "named party" to an action or proceeding, not implied over a person unnamed as a party to the proposed action or proceeding. A Court has no jurisdiction over a non-party. Aryensinger's Dept. Store, Inc. v. Shapiro Bros. Co., Inc., 1982, 115 Misc.2d 850, 354 N.Y.S.2d 813.

Personal or individualjurisdiction over a person is not acquired unless that person (1) is a party to the action or proceeding and (2) has been properly served with a summons or Notice of Petition. CPLR 103 et seq., 401 et.seq; Douglas v. Adel, supra.

"Where the accused is not a party to the civil action or special proceeding, the contempt proceeding is an independent special proceeding." 21 N.Y.Jur.2d, §62, p. 298, citing Weeks v. Coe (1906) 111 A.D. 337, 97 N.Y.S.704, app.den. 112 A.D. 908, 98 N.Y.S. 1117, affd. 188 N.Y. 627, 81 N.E. 1179; see also Geller v. Flamount Realty Corp., 1932, 260 N.Y. 346, 183 N.E. 520; Steinman v. Conlon, 1913, 208 N.Y. 198, 101 N.E. 863.

The New York StateSupreme Court has held that there is a statutory provision requiring a warning notice on the face of a Notice of Petition to hold a person in criminal contempt, and that the statutory provision must be strictly construed (see Judiciary Law Section 756). Consequently, an application which does not contain the prescribed notice on the fact of the application but rather on the fourth page of a movant's supporting affdavits is jurisdictionally deficient. Stevens Plumbing Supply Co. v. Bi-County Plumbing & Heating Co., 1978, 94 Misc.2d 456, 404 N.Y.S.2d 964; cited in 21 N.Y.Jur2d at 294.

Hence, since our Courts have held that the failure to give proper and sufficient notice of the warning requirement on the face of the Notice of Petition/Motion renders such Notice jurisdictionally and fatally defective, it must follow, on principle and from analogy, Michalowski v. Ey, 4 N.Y.2d 277, at 282, 174 N.Y.S.2d 6, at 10, that a Notice of Petition/Motion that does not name a specific person as a party to said action

or special proceeding is likwise and more so, jurisdictionally and fatally defective in regards to personal jurisdiction over that person.

In order to satisfy due process, a proceeding which seeks to punish a person for criminal contempt must be initiated by notice served personally upon the person charged. (See Pitt v. Davison, 1867, 37 N.Y. 235; Billingsley v. Better Business Bureau, supra; Bd. of Education v. Zeluck, supra.

This aspect of Schneider's purported Notice of Motion for an order adjudicating Sam Polur in criminal contempt of court (sic!) is fatally defective. Furthermore, §402 of the CPLR states in pertinent part that: "There shall be a petition, which shall comply with the requirements for a complaint in an action,....." (emphasis supplied)

The opinion of the New York Supreme Court, Special Term, Queens County, in Rockefeller v. Hein, 176 Misc. 659, 28 N.Y.S.2d 266, is instructive on this point in issue. The underlying reasoning of the Court, and not the particular facts

of that case, are important for consideration here:

> "Rule 45 of the Civil Practice Act, provides in part: 'The summons must state the court in which the action is brought, the names of the parties..." at 267

In addition, CPLR 103(b), in pertinent part, states: "Except where otherwise prescribed by law, procedure in special proceedings shall be the same as in actions, and the provisions of the civil practice law and rules applicable to special proceedings." This statement of law clearly requires this Court to focus on the alleged validity of the Notice of Motion and Affidavit filed in the instant "Special proceeding".

First of all, there can be no dispute that a petition for an order of adjudicating a party guilty of criminal contempt is a civil special proceeding. Douglas v. Adel, supra; and other cases cited heretofore. In this regard, the Notice of Motion was fatally defective on its face for failure to name Sam Polur as a party. In line with the rule of law that procedures in a special proceeding shall

be the same as in actions, it is instructive to quote Justice Hallinan in Rockefeller v. Hein, supra:

> "It is settled that the court may permit amendment where there is a misnomer or some defect in the designation. See Wait's New York Practice, 4th Ed., Vol.1, p. 700, and the authorities there cited. But in the instant case,there is not merely a misnomer but a complete absence of the name of the defendant in the summons, which, in my opinion, rendrs it completely defective....While there is no doubt that the party served was the defendant intended as is the person now moving specially, the failure to designate him in any manner in the summons itself, is a defect so fundamental that it cannot be subsequently remedied by the court." at 267. (Emphasis added).

Furthermore, the Rockefeller court cited the only opinion found dealing with the omission of a defendant's name in a summons, Bowler v. Ennis, et al., 46 AppDiv 309, 61 N.Y.S. 686:

> "...we think it is clear that where the summons is served by publication, and where the defendant does not appear, it is necessary

to the jurisdiction of the court that the names of all the defendants shall have a place in the title to the action. The summons is addressed "To the Above Named Defendants', and the defendant is not called upon to read the accompanying notice, to discover that he is summon nor would it be notice to him. The mere fact that the notice declares that the 'foregoing summons is served you by publication," etc., does not make it appear to the defendant McCarthy that he is summoned to appear and answer for the summons itself is addressed to other persons: * * *." (emphasis supplied).

The Rockefeller Court went on to hold, at 268, "In the instant case, no complaint or any other notice acccompanied the summons, and no defendant was named therein. ... Such a process does not satisfy the requirement of Rule 45 of the Rules of Civil Practice, and did not give the Court jurisdiction of the person served. Accordingly, the motion to vacate is granted and the motion to amend is denied." (emphasis added)

It is perfectly clear from the foregoing that Sam Polur was unlawfully adjudicated guilty of criminal contempt where the court never ac-

quired jurisdiction over his person. An order or judgment of a court lacking jurisdiction is void, and objection to the court's jurisdiction in such case may be taken at any stage of the action, including on appeal. Marine Midland Bank N.A. v. Bowker, 89 A.D.2d 194, 456 N.Y.S.2d 243, affd. 59 N.Y.2d 739, 463 N.Y.S.2d 461, 450N.E.2d 247.

Point III

THE ORDER OF JUSTICE KLEIN IS JURISDICTIONALLY DEFECTIVE, FATALLY INSUFFICIENT ON ITS FACE, AND SUBSTANTIALLY IN VIOLATION OF THE LAW AND THE RIGHTS OF SAM POLUR, ESQ.

Justice Klein's Order is defective in that it is lacking a separate Order or Mandate of Commitment. The Decision and Order of Justice Klein is too general to afford SAM POLUR due process of law by notifying him as to what specific conduct on his part was criminally contemptuous and what Section of Judiciary Law §750 was violated by him. SAM POLUR was entitled to be served with a "lawful" Mandate of Commitment, as required by law. Judiciary Law, §752; Matter of Douglas v. Adel, 269 N.Y. 144; People ex rel. Clark v. Truesdell, 79 N.Y.S.2d 413.

The "Order" of Justice Klein needs be cited in pertinent part here to highlight the substantial defects and misleading language:

> ...And due deliberation having been had thereon; and Hyman Raffe, George Sassower and Sam Polur, having commenced these actions and served the summonses in wilfull and deliberate violation..., and the conduct of Hyman Raffe, George Sassower and Sam Polur having been calculated to and having defeated, impaired, impeded and prejudiced the rights of defendants...(Emphasis added) (Order of Justice Klein, at p.5).

First off, I would say that the order does not apprise the accused of "who did what?" Who served what summons to whom? Due Process and the Law (Judiciary Law §752) requires more. In re Berkon, 43 N.Y.S.2d 334; Matter of Rotwein, 291 N.Y. 121. Furthermore, there is no provision in the Criminal Contempt statute (Judiciary Law §750 et seq.) for a finding of "conduct calculated to and having defeated, impaired, impeded and prejudiced the rights of defendants."

Such a finding and burden of proof rightfully belongs to §753 of the Judiciary Law, subd.A., "Power of Courts to punish for civil contempts."

The proceedings brought on by the defendants

in the underlying civil action were in the nature requests to punish for criminal contempt, not civil contempt. As such, Justice Klein erred by unlawfully mixing the law controlling findings of civil and criminal contempt herein. His order further stated:

> Now, on motion of Kreindler & Relkin, P.C. and Feltman, Karesh & Major, it is...
>
> ORDERED, that the motions of Kreindler & Relkin, P.C. to punish Hyman Raffe and George Sassower for criminal contempt, and the motion of Feltman, Karesh & Major to punish are grantedin all respects; and it is further
>
> ORDERED AND ADJUDGED, that Hyman Raffe, George Sassower and Sam Polur are guilty of criminal contempts of court for having wilfully and deliberately violated the Order of Justice Gammerman, dated January 23, 1985, which Order permanently enjoined commencement of the within actions, and it is further
>
> ORDERED, that pursuant to the Judiciary Law of the State of New York, by reason of such criminal contempt of court, Hyman Raffe, George Sassower, and Sam Polur shall each be imprisoned for a period of thirty (30) days in the jail of the County of this Court,... and Sam Polur shall pay a fine of $250.00 to Feltman, Karesh & Major...
> (Emphasis added) (Klein,J. Order, pp.6-9)

The Order of Justice Klein is fatally de-

fective in that it (1) does not conform to due process requirements, i.e., alert SAM POLUR to the specific conduct on his part alleged to be contemptuous and the particular circumstances of such contended contemptuous conduct, (2) wrongly uses civil contempt language as a basis for a finding of criminal contempt, (3) there is no Mandate or Order of Commitment, (4) orders a $250.00 fine paid to "private attorneys" as opposed to the public treasury, and (5) ordered the "Sheriff of any County" to arrest and jail SAM POLUR.

Judiciary Law §752 mandates that an Order of Commitment be issued and that the Order of Commitment must have the particular circumstances of his offense set forth therein. The legality of the detention must stand or fall upon the sufficiency of the Mandates of Commitment. People ex rel. Clark v. Truesdell, 79 N.Y.S.2d 413,at 415. In fact, SAM POLUR asked the Warden of Bronx County House of Detention for Men to show him the Order of

Commitment. The Warden told SAM POLUR that he did not have one and that he would look into the matter. He never spoke to SAM POLUR again.

The same rule prevails in England. Oswald on Contempt, at page 158, says: "An order of committal is bad if it does not specify in what particulars the person commited has been guilty of contempt." The reason for the rule is perfectly apparent. In summary contempt proceedings, if the court saw fit to call his act, no matter what it might be, a criminal contempt, that determination would of necessity be final. The rule applies with equal force to contempts which are not committed in the presence of the court, and its importance is made apparent in the present case. People ex rel. Barnes v. Court of General Sessions, 147 N.Y. 290. See also Matter of Rotwein, supra.

Contempt proceedings are stricti juris. Goldie v. Goldie, 77 App.Div. 12. Courts insist on strict and literal construction of contempt statutes and accord to the accused all rights, even the most technical rights, which it may afford.

In re Berkon, 180 Misc. 659, 43 N.Y.S.2d 334, reversed on other grounds, 268 App.Div. 825, 49 N.Y.S.2d 551, Affd. 294 N.Y. 828, 62 N.E.2d 388.

As stated in Clark v. Truesdell, supra, at 416, under the statute (Sec.752 Judiciary Law), where a person is committed for a criminal contempt, the specific circumstances of his offense must be set forth in the Mandate of Commitment or it is totally defective. Douglas v. Adel, supra; and other cases cited therein. The court in Clark went on to hold that "The defect in the Commitment Mandates under consideration is that the contemptuous act is stated in a general and conclusory form. The Commitments do not, on their face, specify the circumstances under which the contempuous act was committed...."
Clark v. Truedsdell, supra, at 416.

In the instant case not only was the language of Justice Klein's Order general and conclusory in form as to SAM POLUR, there was no separate Order of Commitment. "The practice is to have the

court make an order finding the defendant guilty of contempt and then issue a commitment for the purpose of the execution of the order adjudging the delinquent guilty of the criminal contempt." (emphasis added) 6 Wait's New York Practice, 4th Ed., p.281.

Justice Klein, in his Order, uses the language of the civil contempt statute to make a finding of Criminal contempt against SAM POLUR and others. There is a very large difference between Civil and Criminal Contempt. Garry v. Garry, N.Y. Sup. 1983, 467 N.Y.S.2d 175, 121 Misc.2d 81, and as such the burden of proof in each is totally different. There are no provisions in the criminal contempt statute for a finding of "conduct calculated to and having defeated, impaired, impeded and prejudiced the rights of defendants."

Justice Klein further ordered a $250.00 find to be paid to the private parties to the proceeding, in direct violation of the statute

that directs that any fines imposed shall be paid into the public treasury. Judiciary Law §751.

Finally, Justice Klein initially ordered SAM POLUR jailed in the County Jail of the County in which the court was sitting, which is according to the law, Judiciary Law §751,subd.1; however, he also made an unlawful provision in his Order for the Sheriff of any County to arrest SAM POLUR and place him in jail. In fact, SAM POLUR was incarcerated in the County of Bronx. This was another violation of the Constitutional rights and the Judiciary Law in that he could only be imprisoned for contempt in the County where the court was sitting, i.e., New York County.

Point lV

A CRIMINAL CONTEMPT RULING WITHOUT A HEARING OR TRIAL IS A CONSTITUTIONAL NULLITY

Preliminarily, it must be emphasized, the criminal conviction herein was of a non-summary nature, without a trial, without a hearing -- even, although, not a single authoritative case in the United States subsequent to Bloom v. Illinois, 391 U.S. 194 (1967) has sustained a criminal contempt conviction without a trial or a hearing.

Absent extaordinary circumstances, procedural due process requires notice and hearing before any governmental deprivation of a significant property interest. Boddie v. Connecticut, 401 U.S. 371,379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971). The early leading case of Ex parte Bradley, 74 U.S. (7 Wall.) 864, 872-874, 19 L.Ed. 214 (1868) found the Supreme Court ruling an attorney may not be summarily disbarred without notice and hearing, even when the disbarment results from a charge of contempt for which the Court gave the attorney notice, an opportunity to prepare, and a hearing. See, also, Gamble,

307 F.2d at 781.

Due process requires that a hearing be held before one can be adjudged in contempt. Comerford v. Comerford, 49 A.D.2d 818 (1stDept.1975); Crisona v. Eastern Props. Improvement Corp., 27 A.D.2d 717, 717-718, 277 N.Y.S.2d 477; Hickland v. Hickland, 56 A.D.2d 978,979, 393 N.Y.S.2d 192, 194. Application of Gault, 387 U.S. 1, 87 S.Ct. 1428 (1967) held that a juvenile has the right to notice of charges, to counsel, to confrontation and cross-examination of witnesses. Surely, an attorney is entitled to no less! Here, Justice Alvin F. Klein "found" a criminal conviction, without a trial or hearing under oath, absent a plea of guilty, an allocution or even a charge by the Court! The leading case which follows points up graphically and in detail what should have been done:

State University of New York v. Denton, 35 A.D.2d 176, 316 N.Y.S.2d 297 (4thDept.1970), luminously set down the rule which should have been followed herein. The unanimous Court stated:

For the guidance of the court and partie- in future criminal contempt proceedings arising out of civil actions, we make the following comments: ... we are bound by decisions of the United States Supreme Court to recognize that "criminal contempt is a crime in the ordinary sense; * * * convictions for criminal contempt are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same." (Bloom v. Illinois, 391 U.S. 194, 201, 88 S.Ct. 1477, 1481-1482, 20 L.Ed.2d 522.) In the words of Mr. Justice Holmes, "These contempts are infractions of the law, visited with punishment as such, if such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech." (Gompers v. United States, 233 U.S.604,610, 34 S.Ct. 693,695, 58 L.Ed. 1115.)

In criminal contempts,as in criminal cases, the presumption of innocence obtains. Proof of guilt must be beyond reasonable doubt and the defendant may not be compelled to be a witness against himself. Gompers v. Bucks Stove & Range Co., supra. The fundamental characteristics of both are the same. (Michaelson v. United States ex rel. Chicago, St.P.M.&O.R.Co., 266 U.S. 42, 66, 45 S.Ct. 18,20, 69 L.Ed. 162.) Due process of law requires that the accused should be advised of the charges against him and have a reasonable opportunity to meet them by way of defense or explanation with the assistance of counsel and the right to call witnesses. (Cooke v. United States, 267 U.S. 517,537, 45 S.Ct. 390, 69 L.Ed. 767.).

> We also recognized as fundamental in a proceeding of this nature the right to be confronted by the accuser and to cross-examine him. When, as here, a person charged with criminal contempt has controverted the charges through his attorney, as he is entitled to do (Peo. ex rel. Supreme Court v. Albertson, 242 App.Div. 450,453, 275 N.Y.S. 361, 365), a full hearing is required at which the disputed issues of fact may be resolved. At such a hearing witnesses should be produced, rather than mere affidavits, thereby ensuring a party the right to confront and cross-examine witnesses. These rights are basic to a defendant charged with the commission of a criminal act and we see no reason why they do not appertain to one charged with criminal contempt with the same force as those rights explicitely assured by Gompers v. Buck's Stove & Range Co., supra, and Cooke v. United States, supra. (pp. 302-303, 316 N.Y.S.2d)

That prescient ruling, with facts and the law to be followed virtually "on point" with the instant case, made other singularly cogent rulings, (pp.301, 316 N.Y.S.2d):

> "The courts * * * may not grant an enforcement order or injunction so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law." (Regal Knitwear Co. v. National Labor Relations Board, 324 U.S. 9,13).
>
> "...we conclude that knowledge of a non-party alone is not sufficient without proof of agency

or collusion with the named defendants to impose liability for a violation. (Accord, Wright v. Co.School Bd. of Greensville Co., Va., D.C. 309 F.Supp.671; Briddon v. Briddon, supra; Rigas v. Livingston, supra; 7A Weinstein-Korn-Miller, N.Y.Civ.Pract.par. 6301. 25.) Both Rigas and Briddon, supra, involved notice of the existence of the injunction on the part of the person charged with contempt, but the orders of contempt, nonetheless, were overturned.

Instructively, in the case, Id., the defendants, members of the faculty of state university branch, were found in criminal contempt at a Special Term proceeding, as herein, where whey were not parties to disruptive actions which led to issuance of preliminary injunction enjoining students from disrupting university activity. They were not charged with acting in concert with or as agents named in the preliminary injunction. Faculty members therefore could not be held in contempt for their independent action, even if they had knowledge of the injunction provisions. The Fourth Department ruling in 1970 was prescient. It unerringly set down the law to be followed where the facts meshed so unerringly.

It is clear pursuant to State case law and statutory mandate that a proposed contempt should be adjudicated at a plenary hearing with due process of law including notice, written charges, confrontation, assistance of counsel, compulsory process for production of evidence and opportunity of the accused to confront witnesses against him. Zols v. Lakritz, 74 Misc.2d 322, 344 N.Y. S.2d 626 (Sup.Ct.QueensCo.1973). When a lawyer, as herein, may be subject to a contempt order and possible imprisonment, he is entitled to a full evidentiary hearing. Matter of Passonno v. Passono, 43 A.D.2d 773, 350 N.Y.S.2d 771; Shkolnik v. Schkolnik, 41 A.D.2d 523, 340 N.Y.S.2d 70. Since the record herein reveals that petitioner was not advised of this right -- that the Justice, Hon. Alvin F. Klein, merely handed down a ruling after a mere oral "argument" at a Special Term Part 1 proceeding with no "charges" ever having been lodged against your petitioner -- the order adjudging him in contempt must be reversed.

Bruno v. Bruno, 50 A.D.2d 701, 375 N.Y.S.2d 442 (3rd Dept.1975); Ingraham v. Maurer, 39 A.D.2d 258, 334 N.Y.S.2d 19; King v. Barnes, 113 N.Y. 476, 21 N.E. 182. Denial of a hearing at which full proof should have been had and at which the moving party does not have the burden of proof is not due process. Singer v. Singer, 52 A.D.2d 774, 382 N.Y.S.2d 793; Penn-Dixie Industries, Inc. v. Castle, 77 A.D.2d 844, 431 N.Y.S.2d 34 (1stDept.1980). See, also, Pereira v. Pereira, 35 N.Y.2d 148, 319 N.E.2d 413. Due process requires that an evidentiary hearing be held to resolve the disputed conflicts before one can be adjudged in criminal, or even civil contempt. Singer v. Singer, supra; Barecca v. Barecca, 77 A.D.2d 793, 430 N.Y.S.2d 739 (4thDept.1980). The Constitution requires "an opportunity * * * (be) granted at a meaingful time and in a meaningful manner," Armstrong v. Manzo, 380 U.S. 545,552, 85 S.Ct. 1187,1191 (1965), "for [a] hearing appropriate to the nature of the case," Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70

S.Ct. 652,657 (1950). A state must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due PROCESS Clause. Id., 70 S.Ct., at 659.

It is not new or novel law that absent a plea of guilty, as herein, pursuant to ministerial constitutional compulsion, all courts adhering to the Constituton of the United States or New York State are without the jurisdictional authority to convict, sentence and imprison for non-summary criminal contempt. The Sixth Amendment prohibits through its confrontation clause the jailing of your petitioner herein. Pointer v. Texas, 380 U.S. 400, much less the "finding" of criminal contempt.

The Supreme Court, In re Savin, 131 U.S. 267, 33 L.Ed. 150, 9 Sup.Ct.Rep. 699, applied the rule to proceedings for contempt:

> Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity

> to meet them by way of defense or explanation. We think this includes the right to assistance of counsel, if requested, and the right to call witnesses to give testimony, and either relevant to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed. See Hollingsworth v. Duane, Wall.Sr.. 77, Fed.Cas.No. 6,616; Re Stewart, 118 La. 827, 43 So. 455; Re Clark, 208 Mo. 121, 106 S.W. 990.

And as the Supreme Court ruled in Cooke v. United States, 267 U.S. 517 (1924): "When the contempt is not in open court, however, there is no such right or reason in dispensing with the necessity of charges and the opportunity of the accused to present his defense by witnesses and argument." (267 U.S., at 536) The Court further spoke to the precise issue herein (this lawyer is "found" guilty of criminal contempt for mere service of a summons he had not read, did not have drawn up, merely acted as a process server without taking a fee, and acted on behalf of a fellow-lawyer as a personal favor - without more; there, Id., attorney Cooke "merely wrote" an inflamatory letter to the Judge in his case! The rule enunicated in Cooke was "right on point"

herein. (267 U.S.,at 538) The Supreme Court surely was "writing for the ages!":

> The court proceeded on the theory that the admission that the petitioner had written the letter foreclosed evidence or argument. In cases like this, where the intention with which acts of contempt have been committed must necessarily and properly have an important bearing on the degree of guilt and the penalty which should be imposed, the court cannot exclude evidence in mitigation. IT IS A PROPER PART OF THE DEFENSE. There was a suggestion in one of the remarks of the petitioner to the court that while he had dictated the letter he had not read it carefully, and that he had trusted to the advice of his partner in sending it; but he was not given a chance to call witnesses or to make a full statement on this point. (emphasis added)

Here, petitioner was unable to confront anyone. There was no hearing under oath and pursuant to CPLR 2106 and penalties of perjury. There was, in fact, no testimony under oath. There was no confrontation of the accuser. In fact and in truth the summons allegedly "served" was not even "looked at." It was not composed by petitioner. It was merely served as a process server without exacting one dollar or one penny as a fee. Or as a messenger. It was done as a ministerial

favor who asked that a petitioner serve a number of pleadings upon four or five lawfirms. It was done as a favor. Where, in a somewhat comparable situation, Constantineua, infra, also punished by the Court, the Supreme Court found the "procedure pursued was unfair and oppressive to the petitioner." Surely, that should be the finding herein as a matter of fact, as a matter of law, as a matter of Equity, as a matter of the rightness of things.

The Supreme Court in Wisconsin v. Constantineua, 400 U.S. 433, 91 S.Ct. 507, 519 stated it eloquently:

> ...where the State attaches a "badge of infamy to the citizen, due process comes into play, Wieman v. Updegraff, 344 U.S. 183,191...."[T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." Anti-Fascist Committee v. McGrath, 341 U.S. 123, 168, 95 L.Ed. 817, 852, 71 S.Ct. 624 (Frankfurter, J. concurring).
>
> Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice

> and an opportunity to be heard are essential. ... This appellee was not afforded a chance to defend herself. She may have been the victim of an offiial's caprice. Only when the whole proceedings leading to the pinning of an unsavory label on a person are aired can oppressive results be prevented.

There could have been no greater "badge of infamy" herein than a "finding"(sic!) of criminal contempt of Court, followed by front page publication in the official legal newspaper, The New York Law Journal, with Attorney Schneider's personal comments explicating the alleged necessity and validity of the finding of "criminal contempt," also on the front page for having provided that "scoop" to the publication.

In re Oliver, 333 U.S. 257, at p. 273 (1947) spoke to the effectively secret proceedings herein: "A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense - a right to his day in court - are basic to our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony and to be represented by

counsel." See, e.g., Powell v. Alabama, 287 U.S. 45, 68-70; Snyder v. Massachusets, 291 U.S. 97, 116; Hovey v. Elliott, 167 U.S. 409, 418; Holden v. Hardy, 169 U.S. 366, 390-391; Morgan v. United States, 304 U.S. 1,14-15.

Finally, In re Rosahn, 671 F.2d 690, 697, (2dCir.1982), sets down the correct rule to be followed herein:

> This court has approved the general principles set out in Alter, which held that it was not enough that the judge considered the parties' affidavits, oral argument and offers for the record; the witness was entitled to an "uninhibited adversary hearing" at which "at the very least ... [he must] be allowed to probe all nonfrivolous defenses. ..." 482 F.2d, at p. 1024. See, In re Savin, 509 F.2d 1252, 1255 (2dCir. 1975). More specifically, we have held that before a witness is imprisoned under §1826(a), he must receive notice of the charge against him and the facts upon which it is based, and time to prepare a defense. Id.

See, also, Taylor v. Hayes, 418 U.S. 488; Groppie v. Leslie, 404 U.S.496,506, 30 L.Ed.2d 632; ABA Standards for Criminal Justice 20; Weiss v. Burr, 484 F.2d 973,986; Cammer v. United States, 350 U.S. 399 (1956); Michaelson v. United States, 266 U.S. 42, 66-67)(1924).

Point V

THE SAXE, J., ORDER WAS A FINAL DETERMINATION AS TO PETITIONER

Respondents' motion to hold petitioner in contempt for serving the summons in question herein was impermissibly twice made - and twice ruled on: First to Justice David Saxe. Secondly to Justice Alvin F. Klein. The same facts as to petitioner were put in issue, but respondent, in the Klein motion, in slippery fashion, never focused attention of the second Court on the identical relief being sought before him had already been submitted to the first Court. Justice Saxe ruled on the same matter prior to the ruling by Justice Klein. The case as to petitioner was resolved before the citation for criminal contempt herein issued. As such, the first determination by Justice Saxe, ruling that Attorney Polur was not to be held in contempt - estopped Feltman, Karesh, Major, P.C.'s relitigating that issue. The citation of Justice Klein is thereby a nullity on the grounds of res judicata, col-

lateral estoppel and the primary Double Jeopardy Constitutional prohibitions.

Proof Vl

NO "PROOF BEYOND A REASONABLE DOUBT" WAS FOUND OR RULED UPON BY THE NISI PRIUS COURT, THUS CREATING A JURISDICTIONAL DEFECT IN THE "CRIMINAL CONTEMPT" FINDING

It is Hornbook Law that criminal contempt requries proof beyond a reasonable doubt that a party wilfully violated a court order. See Powell v. Clauss, 93 A.D.2d 883, 461 N.Y.S.2d 413 (2dDept.1983); Yorktown Central School District v. Y.C.T., 42 A.D.2d 422, 348 N.Y.S.2d 367, 372 (2dDept.1973). The evidence necessary to find the accused in criminal contempt is beyond a reasonable doubt, in that it is an offense against the court's authority. King v. Barnes, 113 N.Y. 476, 21 N.E.182. The People were required to prove petitioner's guilty beyond that reasonable doubt. People v. Shapolsky, 8 A.D. 2d 122,125, 185 N.Y.S.2d 639,642; People ex rel. Valenti v. McCloskey, 8 A.D.2d 74,83, 185 N.Y.

S.2d 952, 961-962; Matter of Wegman's Sons, 40 App.Div. 632,633, 57 N.Y.S. 987,988-989; Michaelson v. United States, 266 U.S. 42,66, 45 S.Ct. 18,20, 69 L.Ed. 162. Here, the People of the State of New York never even appeared in the case. It was solely private attorneys, openly and blatently seeking private gain. [The fines imposed were to be paid to them as private attorneys!]

But criminal contempt is a crime. United States v. Williams, 622 F.2d 830 (5thCir.1980), cert.den., 449 U.S. 1127, 101 S.Ct. 946, 67 L. Ed.2d 114 (1981). As such, the requisite standard of proof is "beyond a reasonable doubt." Matter of Reehlman, M.D., 763 F.2d 670,671 (1985). See, also, Bloom v. Illinois, 391 U.S. 194,198, 88 S.Ct. 1477,1480, 20 L.Ed.2d 522 (1968); Gompers v. Buck, Stove & Range Co., 221 U.S. 418,446, 31 S.Ct. 492,500, 55 L.Ed. 797; Matter of Edward Joyce, 506 F.2d 373 (5thCir.19 75). The Supreme Court in, In re Winship, 397 U.S. 357, 90 S.Ct. 1068, at 1073, explicitely

set forth the Constitutional eminence to be accorded this standard of proof:

> Lest there remain any doubt about the Constitutional stature of the reasonable-doubt standard - we explicitely hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necesssary to constitute the crime with which he is charged.

Herein, the Court should have perhaps re-read the memorable words found in Brady v. Maryland, 373 U.S. 83 (1963), at page 87:

> Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in our courts."

Herein, naked Judicial Power was asserted without the opportunity to rebut, to explain, to disclose, to explicate anything. No testimony under oath was taken. The Supreme Court Justice herein merely heard oral argument on a motion.

No one was under oath. No one testified subject to cross-examination and penalties of perjury. No jury trial was permitted. No trial was held. No hearing under oath subject to CPLR 2106 and penalties of perjury was had. There was merely an oral argument on submitted affidavits alone - followed by Draconian "findings" of criminal contempt, not even in the presence of the Court! All followed by public shame and abuse, by obloquy, by imprisonment for a 30-day term, by professional abjuration.

Point VI[1]

NO ALLEGATION APPEARS IN THE ORDER HEREIN THAT DISOBEDIENCE OF A "LAWFUL" COURT ORDER PURSUANT TO JUDICIARY LAW §750(A)(3)(4) OCCURRED

The power of the Courts to punish for contempt existed at common law. People ex rel. Stearns v. Marr, 94 N.Y.S. 965 (1903). It is now conferred by statute. Judiciary Law §750; Penal Law §215.50. A court of record has general power to punish a person for a contempt where he is guilty in respect of such court of any of the acts declared by statute to be contempts. Gold v. Menna, 25 N.Y.2d 475, 307 N.Y.S.2d 33, and no others. Baumgartner v. Baumgartner, 273 App. Div. 411, 77 N.Y.S.2d 668. The power to punish for criminal contempt cannot be extended in the least degree beyond the limits imposed by statute. People ex rel. Clarke v. Truesdell, 79 N.Y.S. 2d 314 (1948).

Herein, significantly, nowhere in the Order of Justice Klein does it contain the state-

ment that it was a "lawful" Order or Mandate of the Court that was allegedly disobeyed. Such omission is jurisdictional. Id., see, also, Pawolski v. Schnectady, 217 N.Y. 117 (1916), where the Court of Appeals ruled the power of a court to punish for criminal contempt should not be exercised unless the acts constituting the contempt are clearly proved to be wilfully disobedient to the lawful mandate of a court. Where, as here, the terms of an Order are vague and indefinite as to petitioner, State v. Unique Ideas, 44 N.Y.2d 345, 405 N.Y.S.2d 656, your petitioner may not be adjudged in criminal contempt for wilfull failure to "obey." Intent is a necessary element in criminal contempt. People ex rel. Bernstein v. LaFetra, 171 App.Div. 269, 275, 157 N.Y.S. 386,390; Matter of Rotwein, 291 N.Y. 116, 122, 51 N.E.2d 669,672.

There was no mandate of commitment herein, only the order "finding" criminal contempt. So "intent" could not therein be determined. There was no hearing. There was no allocution. There

was no testimony under oath. There was no confrontation pursuant to Constitutional mandate. There was no submission other than an affidavit this petititioner has characterized as being materially false. Finally, there can be no contempt if the alleged disobedience was a result of misunderstanding or mistake - or, as herein, simply the act of a messenger or a process server as a favor for a lawyer-colleague and a "friend.". The petitioner's rights in the premises were totally abjured and violated. There could be no confrontation of witnesses against him. None existed to any criminal act. [See, e.g., Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347]

For a classic case dealing with the imperative necessity of there first being a "valid" and "lawful" mandate before contempt for failure to obey it can be imposed, see Spector v. Allen, 281 N.Y. 258, 22 N.E.2d 864 (1939). There, the issue was whether there was a lawful mandate of the court issued to a prospective witness before

a grand jury. The Court's language was luminous:

> Punishment for a criminal contempt is a drastic remedy for wilfull wrong. The mandate must be clear before disobedience can subject a person to such punishment. (p.259 of 281 N.Y.)
>
> The defect here is not purely formal or techincal. To protect the liberty of the individual from possible abuse of power, punishment for contempt is hedged about with restrictions and subject to regulations imposed by the Legislature. Disobedience only of mandates of the court given in accordance with law are subject to such punishment. The command must be clear; disobedience must be willful. (p.260 of 281 N.Y.)

See, also, Saal v. South B.R. Co., 122 App.Div. 364, 106 N.Y.S. 996 (1907); People v. Balt, 34 A.D.2d 932, 312 N.Y.S.2d 587 (1st Dept.1970); Sheriden v. Kennedy, 12 A.D.2d 332, 212 N.Y.S.2d 296.

Finally, a case "on point" on this vital issue of acting on a valid and lawful order is Donovan v. City of Dallas, 377 U.S. 408, 84 S.Ct. 1579 (1964). At page 1583 of 84 S.Ct. we find the following lucid rule:

> It is argued here, however, that the Court of Civil Appeals' judgment of contempt should nevertheless be upheld on the

> premise that it was petitioners' duty to obey the restraining order whether that order was valid or invalid.
>
> The Court of Civil Appeals did not consider or pass upon this question, but acted on the assumption that petitioners were guilty of "wilful disobedience of a valid order." 368 S.W.2d at 244 (emphasis supplied)
>
> Since we hold that the order restraining petitioners from prosecuting their case in the federal courts was not valid, but was invalid, petitioners have been punished for disobeying an invalid order. (emphasis added)

Of course, that very issue was not resolved in the case at bar. By not providing appellant basic due process, basic equal protection of the laws and other fundamental rights - not having charge(s) uttered by the Court, no testimony under oath, no confrontation of accuser(s) of appellant, inter alia, - there was no forum to prove the falsity of the contentions, to plead "not guilty" to formal charge, to reveal and prove no "lawful mandate was even stated to have been violated! [In view of the overt and evident failures of the Gammerman Order of Sep-

tember 23, 1985, it is perhaps not surprising the Klein, J.Order did not state it was a "lawful" Order that was allegedly violated!]

Point V11

THE COURT ABUSED ITS DISCRETION BY HOLDING PETITIONER IN CONTEMPT, BECAUSE OF LACK OF A FACTUAL BASIS

The Court herein abused its discretion in finding against petitioner in criminal contempt of Court for a single act, unconnected with any prior contemptuous conduct. The fact remains that the only act arguably charged as against petitioner is alleged service of a single summons. It was the mere act of a messenger. Of a process server working without a fee. Petitioner acted gratuitously, as an act of helpfullness to a fellow lawyer - and expressly waived any fee. This service was undertaken at the request of George Sassower. Petitioner played no other role in the matter. Petitioner did not draw the papers, did not advise they be drawn, did not

have knowledge of the matter or allegations therein, did not have any interest or connection with the matter at all. Petitioner's role was that of a messenger, a process server. Nothing more. Such, standing alone, is insufficient to support the citation. Issues of material fact were raised. Apparently, Justice Klein was not aware a hearing with testimony under oath, with confrontation to the accused, with an accusatory instrument presented to such "defendant" (sic!) Quantum Heating Services v. Austern, 100 A.D.2d 843, 474 N.Y.S.2d 81; Judiciary Law, §772; CPLR 2218. Surely, it is even more imperative in a criminal contempt proceeding. A hearing would have readily adduced the total paucity of the charges by private attorneys - especially where they wrote the ORDER for the Justice awarding themselves as private attorneys monetary gains in a criminal contempt! The criminal contempt Order came down "on the sly." This petitioner believed the Court would, pursuant to Due Pro-

cess and Equal Protection of the Law, at worst, merely "find" that there was a basis presented to hold a hearing or trial as to whether criminal contempt would lie! There was simply no statutory or Constitutional premise for the Draconian "ruling" and "finding" (sic!) which came down.

Point IX

THE MULTIPLE FINES ORDERED PAID TO PRIVATE LAWFIRMS PURSUANT TO JUSTICE KLEIN'S CRIMINAL ORDER IS AN UNCONSTITUTIONAL RULING

The Order filed by Justice Klein on July 1, 1985 cannot be sustained as a criminal contempt against petitioner. Multiple fines are therein ordered to be paid by the alleged contemnors to private attorneys who drew up and submitted the Order, to wit, Feltman, Karesh & Major, P.C. and Kreindler & Relkin, P.C. "In such case the punishment is imposed to vindicate the dignity of the court, and in the interest of public justice, and not for the benefit of the party. The fine

belongs to the public, and not to the moving party..." (emphasis added) Mutual Milk & Cream Co. v. Tietjen, 73 App.Div. 287,290 (1st Dept.1902). See, also, Boon v. McGucken, 67 Hun, 251, 22 N.Y.S. 424; People v. Gilmore, 88 N.Y. 628; Judiciary Law, §751.

A criminal contempt is for wilfull disobedience to a lawful mandate of the Court (Judiciary Law, §750). That was nowhere alleged in the Order.

As succinctly stated in Re City of Corning, 162 N.Y.S.2d 687, 691 (Sup.Steuben Co.1957): "A criminal contempt is an offense against the PEOPLE of the State and a fine is imposed which goes into the public treasury..." (emphasis added)

Contempt statutes are a limitation on the power of the court to punish for contempt and should therefore be strictly construed ("strictissimi juris") Dollard v. Koronsky, 199 N.Y. 558 (1910); Re Young, 29 Misc.2d

817, 211 N.Y.S.2d 621; Bridgman v. American Book Co., 12 Misc.2d 63, 173 N.Y.S.2d 502 (1958). And strict construction is generally in favor of the accused. Wolf v. Hubbard, 191 Misc. 647, 78 N.Y.S.2d 671 (1948). That rule, it is respectfully urged, should be herein applied.

Point X

A JURY TRIAL SHOULD HAVE BEEN ORDERED AS A MATTER OF MINISTERIAL CONSTITUTIONAL COMPULSION BEFORE CONVICTION, SENTENCING, IMPRISONMENT COULD BE ACHIEVED AS HEREIN WITH RESPECT TO PETITIONER

Inasmuch as the "criminal contempt" conviction herein is considered a "serious crime" (Judiciary Law §90(4)(d), 22 NYCRR §603.12(c), a jury trial was mandated despite incarceration of less than six (6) months. Bloom v. Illinois, 391 U.S. 194 (1968). The language of the Supreme Court in this leading case is instructive:

Our deliberations have convinced us, however, that serious contempts are so nearly like other serious crimes that they are subject to the jury trial provisions of the Constitution, now binding on the States. ... dispensing with the jury in the trial of contempts subjected to severe punishment represents an unacceptable construction of the Constitution, "an unconstitutional assumption of powers by the [courts] which no lapse of time or respectable array of opinion should make us hesitate to correct." Black & White Taxicab & Transfer Co. v. Brown & Yellow Cab & Transfer Co., 276 U.S. 518, 533 (1928) (Holmes, J., dissenting). (p.198)

The constitution guarantees the right to jury trial in state court prosecutions for contempt just as it does for other crimes. (p.200)

Criminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both. (p.201)

Indeed, in contempt cases an even more compelling argument can be made for providing a right to jury trial as a protection against the arbitrary exercise of official power. Contemptuous conduct, though a public wrong, often strikes at the most vulnerable and human qualities of a judge's temperament. (p.202)

Our experience teaches that convictions for criminal contempt, not infrequently

> resulting in extremely serious penalties, see United States v. Barnett, 376 U.S. 681, 751 (Goldberg, J. dissenting), are indistinguishable from those obtained under ordinary criminal laws. If the right to jury trial is a fundamental matter in other criminal cases, which we think it is, it must also be extended to contempt cases. (pp.208-209) (emphasis added)

And, at the same Court Term, the Supreme Court in Duncan v. Louisiana, 391 U.S. 145 (1968) memorably added to the fundamental rulings enunciated in the leading case of Bloom v. Illinois, Id.:

> Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. (p.156)

> Our conclusion is that in the American States, as in the federal juridical system, a general grant of jury trial for serious offenses is a fundamental right, essential for preventing miscarriages of justice and for assuring that fair trials are provided for all defendants. (p.158)

In the case at Bar, clearly the Justice forgot the profound teachings of the Supreme Court in Bloom, supra, and in Duncan, Id. Not only was there no hearing, no trial, no right to compulsory process for witnesses, no right to confront

accuser(s), no right to a speedy and public trial, no right to have testimony under oath and subject to cross-examination, but the "finding of criminal contempt" was merely an arbitrary ruling and conviction pursuant to which your appellate was sentenced to and served time in jail. See, also, Pitt v. Davison, 37 N.Y. 235 (1867), based on the "well settled principle of the common law, that no person shall be condemned unheard." That was done herein!

Point XI

THE CONSTITUTIONAL PROHIBITION AGAINST DOUBLE JEOPARDY WAS VIOLATED BY JUSTICE KLEIN WHO KNEW OR SHOULD HAVE KNOWN OF THE PRIOR ACQUITTAL BY ACTING JUSTICE SAXE OF THE SAME ALLEGED ACT OF SERVING A SUMMONS

On or about May 9, 1985 Acting Supreme Court Justice David B. Saxe exonerated petitioner of a criminal contempt of court for having allegedly violated the "Order of permanent injunction of the Honorable Ira Gammerman dated January 23, 1985" by service of a summons upon Feltman, Karesh & Major, P.C. That finding was succinctly stated: "ORDERED, that defendant's motion to punish Sam Polur for a criminal contempt of court is denied."

On or about June 6, 1985 Justice Alvin F. Klein, absent an accuser under oath, one subject to cross-examination and penalties of perjury, without a trial or testimony under oath, with the right to allocution denied [see, e.g., Matter of Katz v. Murtaugh, 28 N.Y.2d 234, 238, 321 N.Y.S.2d 104, 269 N.E.2d 816], ruled petitioner should be convicted of criminal contempt,

sentenced, imprisoned and fined. The Order of Justice Klein was entered in the Clerk's Office on July 1, 1985 moments after that of Acting Justice Saxe's Order of Exoneration.

The non-summary criminal contempt, thus, was founded on mere submitted affidavits. The accused therein, your petitioner, was not afforded the right to a trial for the "serious crime", as found by the Supreme Court in Bloom, supra. No information or indictment was obtained. He lost his rights to testify under oath, to have his accusers testify under oath subject to CPLR 2106 and penalties of perjury, to confront his accuser(s) and the right to a decision rendered by an impartial fact finder. He was clearly the victim of "Double Jeopardy" prohibtions of Federal and State Constitutions, rendering everything which occurred against petitioner illegal and unconstitutional.

Point XII

NO CONSTITUTIONAL OR STATUTORY AUTHORITY EXISTS TO HAVE NAMED PRIVATE ATTORNEYS AS THE SOLE PROSECUTORS IN THIS CRIMINAL CONTEMPT PROCEEDING

In Polo Fashions v. Stock Buyers Int'l,Inc., 760 F.2d 698 (6thCir.1985), Chief Judge Lively, speaking for the unanimous Court, spoke directly to the issues herein. IN Polo, Id., defendants asserted that in the absence of any supervision or control by the United States Attorney's Office, prosecution of a criminal contempt action by counsel for a party in the underlying civil litigation constitutes a denial of due process. The Court memorably ruled:

> We conclude that it was an abuse of discretion for the district court to appoint attorneys for Polo to conduct the criminal contempt proceedings. These attorneys could assist the United States Attorney or an assistant, but could not proceed alone. ... The development of safeguards for defendants in criminal contempt proceedings, particularly with respect to the rights to trial by jury, was reviewed in Bloom v. Illinois, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968).
>
> ...
>
> One of these procedural protections is the requirement that criminal actions be prosecuted by disinterested, publicly em-

ployed attorneys. A private attorney employed to represent a client does not operate under the same restraints as a public prosecutor. Aside from his ethical obligations a privately employed attorney has the single permissible objective of forwarding his client's interests. [emphasis added]

A public prosecutor, on the other hand, must consider the public interest which lies as much in seeing justice done in every case as in the successful prosecution of any particular case. The role of federal prosecutor was eloquently described by the Supreme Court in Berger v. United States, 295 U.S. 78,88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935).:

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilty shall not escape or innocence suffer." [all above p. 704 of 760 F.2d]

Finally, the Court wrote incisively of the fundamental distinction between the private and the public prosecutor (760 F.2d, at p. 705):

It is too much to expect an attorney committed to his client and the client's

> cause to recognize the "twofold aim" referred to in Berger when acting as prosecutor in proceedings which, if successful, can beneift immeasurably that client and his cause. We recognize that federal prosecutors occasionally overlook their twofold obligation and become too concerned with obtaining convictions. However, this overzealousness does not have its roots in a conflict of interest.
>
> This is quite different from approving a practice which would permit the appointment of prosecutors whose undivided loyalty is pledged to a party interested only in a conviction. (emphasis added)

It is respectfully urged there is no statutory law authorizing Private Prosecutors in the State of New York. The actions herein are a usurpation, a brazen wresting of power residing exclusively in the Sovereign, in the People of the State of New York. This entire proceeding is unconstitutional. This Judicial Tribunal is respectfully urged to so find at this time.

The classic formulation cited in Berger, supra, was abjured and emasculated by the Private Prosecutor herein: The self-serving order he drafted, crassly mandated payment of "fines" (sic!) to private lawfirms. No statement is found that

a"lawful" mandate was violated. Double jeopardy and Collateral Estoppel were imposed through wilfull failure to cite the underlying fact. Other egregious omissions and commissions of the most fundamental nature are cited, supra, throughout this motion.

Conclusion

1. The Court should find that Private Attorneys seeking private profit from a criminal contempt violate the Constitution of the State and Federal Sovereigns.

2. Double Jeopardy and Collateral Estoppel should be found because Acting Supreme Court Justice David B. Saxe first found Sam Polur "Not Guilty" of Criminal Contempt; thereafter,on the same basic facts and issues Justice Alvin F. Klein found Sam Polur "Guilty" of Criminal contempt.

3. A Criminal Contempt ruling without a Hearing or Trial is a Constitutional nullity.

4. No proof beyond a reasonable doubt was found or ruled upon by Justice Klein,

thus creating a jurisdictional defect in the "Criminal Contempt" finding merely based on a motion "argument" (sic!).

5. There was a failure to allege a disobedience of a "lawful mandate" pursuant to Judiciary Law §750(A)(3)(4), a fatal omission.

6. No factual basis existed for holding petitioner in criminal contempt without even a semblance of proving "intent" or any other required male fide, indispensible for criminal conviction of a "serious crime," as herein.

7. A jury trial should have been accorded to petitioner as a matter of ministerial constitutional compulsion before conviction, sentencing, imprisonment could be achieved herein with respect to the petitioner.

8. Failure to have brought on the criminal conviction proceeding without adherence to CPLR, CPL, related Statutes and the Federal and State Constitutional mandates for Equal Protection of the Law and

Due Process of Law, made that "finding" adverse to fundamental fair play and one that should now be reversed and stricken pursuant to Law and Equity.

9. This proceeding is properly brought pursuant to §440.10 Criminal Procedure Law, and the Court should vacate the judgment upon virtually all the material grounds therein recited.

This Court is respectfully urged to grant the relief sought herein on all other further and different grounds, in addition to those cited, it deems just and appropriate in the premises.

DATED: May 5, 1986.

s/

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Law Offices
FELTMAN, KARESH, MAJOR & FARBMAN

May 12, 1986

Hon. Alvin F. Klein
Justice of the Supreme Court,
New York County
Supreme Courthouse
60 Centre Street
New York, New York 10007

Re: Hyman Raffe v. Feltman, Karesh & Major
Supreme Court, New York County
Index No. 8749/85

Dear Justice Klein:

We are the attorneys for Lee Feltman, the court-appointed Receiver for Puccini Clothes, Ltd., and we are the defendant pro se in this action which was dismissed by Order of Judge Saxe, dated June 25, 1985, and subsequently discontinued with prejudice by Hyman Raffe pursuant to a Stipulation.

We are in receipt of a Notice of Motion, dated May 5, 1985, wherein attorney Sam Polur ("Polur"), Mr. Raffe's former counsel, seeks, for perhaps the sixth or seventh time, an order overturning Your Honor's Order dated June 26, 1985 and entered July 1, 1985, which adjudged Polur in contempt of Court for willfully violating the January 23, 1985 Permanent Injunction Order issued by the Hon. Ira Gammerman of this Court. A review of Your Honor's Order of June 26, 1985 (a copy of which is enclosed) reveals that Polur's

EXHIBIT "B-1"

latest application to reargue has been made in the wrong action. Polur was adjudged in contempt of Court by Your Honor in Raffe v. Riccobono, et. al., New York County Index No. 9522/85. Accordingly, Polur's application is, on its face, improper and should be denied on that basis alone.*

Nonetheless, even if Polur's application were procedurally proper (clearly it is not), the arguments contained in the moving papers are largely the same stale, unsupported and self-serving arguments which Mr. Polur or his colleague, George Sassower, have made a countless number of times. In each instance, these arguments have been rejected by every Court called to pass upon them. The following is a litany of instances where Your Honor's Order has been upheld:

(a) Your Honor's Order of June 26, 1985 was subsequently unanimously affirmed by the Appel-

* Furthermore, Justice Gammerman's Order of March 11, 1986 specifically requires that before any motion is made in the Puccini litigations, prior permission must be granted by him. To our knowledge, no such permission was ever sought or granted, and the moving papers totally ignore this requirement. The application is thus null and void on this additional basis.

late Division, First Deparrment;

(b) The Court of Appeals subsequently refused to hear the Sassower/Polur appeal from the determination of the Appellate Division;

(c) By decisions dated August 8, 1985 and December 27, 1985, respectively, Your Honor adhered to the June 26, 1985 Order in all respects;

(d) At a habeas corpus proceeding instituted by George Sassower on behalf of Polur (and at which hearing Polur testified), Justice Sandifer dismissed the petition;

(e) At a habeas corpus proceeding instituted by George Sassower on behalf of Sam Polur in the United States District Court, Southern District of New York, at which Polur was present and was personally given the opportunity to be heard, Judge Mary Johnson Lowe dismissed the petition;

(f) The Appellate Division, First Department dismissed an Article 78 Proceeding instituted by Sassower/Polur/Raffe for the purpose of collaterally attacking Your Honor's June 26, 1985 Order.

Copies of such determinations are collectively submitted herewith.

In the light of the foregoing and the endless drain on the assets of the Puccini Estate which has been caused by the unprecedented Sassower/Polur litigation assault, we respectfully request that the foregoing Orders be enforced and that we not be required to respond to this latest repetitive motion. Frankly, it is our opinion that if any relief were granted to Polur in connection with Your Honor's Order of June 26, 1985 it would simply open the floodgates of lawsuits or proceedings against every judge and lawyer who has had anything to do with this case, notwithstanding Justice Gammerman's Permanent Injunction Order.

We are sending a copy of this letter, together with enclosures, to Justice Gammerman since, pursuant to his March 11, 1986 Order (a copy of which is enclosed),all Puccini litigations including this action have been consolidated (and have been stayed) before him. In light of this Order, we are uncertain whether Polur's latest mostion is properly returnable before Your Honor or Justice Gammerman.

If either Your Honor or Justice Gammerman believes that a conference would be appropriate to resolve any confusion caused by Polur's latest application, we would be glad to attend.

I thank Your Honor for his time and consideration in this matter.

Respectfully submitted,

s/

Edward Weissman

EW:yg

cc: Hon. Ira Gammerman
Sam Polur, Esq.
Kreindler & Relkin, P.C.

Law Offices
Feltman, Karesh, Major & Farbman

May 27, 1986

By Hand
Hon. Alvin F. Klein
Justice of the Supreme Court,
New York County
Supreme Courthouse
60 Centre Street
New York, New York 10007

Re: Hyman Raffe v. Xavier C. Riccobono,et.al.
Supreme Court, New York County
Index No. 9522/85

Dear Justice Klein:

We are the attorneys for Lee Feltman, Esq., the court-appointed Receiver for Puccini Clothes, Ltd. and we are a defendant pro se in this action which was dismissed by Your Honor's Order dated June 26, 1985 (the "Order").

After writing to Your Honor on May 12, 1986 in order to point out certain of the legal infirmities besetting the latest application by attorney Sam Polur ("Polur") to vacate the Order adjudging Polur in contempt of court for his willful violation of a court order, we received still another application by Mr. Polur seeking that same relief. Polur's latest motion is returnable June 2, 1986. A copy of Polur's latest motion (with exhibits) is enclosed.

Reference is made to my letter to Your Honor dated May 12, 1986 (another copy of which is enclosed) and to the enclosures to such correspondence documenting the numerous occasions Your Honor's Order withstood attack by Polur and attorney

EXHIBIT "B-2"

George Sassower in the federal court, Special Term and in the Appellate Division, First Department.

We again write to Your Honor requesting an Order directing that the parties not be required to respond to Polur's latest repetitive application. Alternatively, and as previously requested, we would be pleased to attend any conference Your Honor might direct in connection with Polur's latest application.

I again thank Your Honor for his time and consideration in this matter.

Respectfully submitted,

s/

Edward Weissman

EW:yg
Enclosures.

cc. Sam Polur, Esq.
Kreindler & Relkin, P.C.

SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

HYMAN RAFFE,

Plaintiff,

-versus-

XAVIER RICCOBONO, DONALD DIAMOND, FELTMAN, KARESH & MAJOR, ESQS. and KREINDLER & RELKIN, P.C.,

Defendants.

Index No. 9522/85

HYMAN RAFFE,

Plaintiff,

-versus-

KREINDLER & RELKIN, P.C., HON. WALTER M. SHACKMAN, "John Doe" and "John Roe," names ficticious, persons intended to be those who communicated with the Court ex parte,

Defendants.

HYMAN RAFFE,

Plaintiff,

-versus-

DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, ESQ., KREINDLER & RELKIN, P.C., CITIBANK, N.A., and JEROME H. BARR, ESQ., Individually and as Executor of the Will of Milton Kaufman,

Defendants.

REPLY AFFIRMATION BY
SAM POLUR, Esq.

EXHIBIT "C"

SAM POLUR, Esq., duly licensed Attorney at Law State of New York, respectfully affirms in this Reply, that the Court should not accord the alleged "answer" any more legal credibility than it deserves. Precisely nothing! Reasons follow:

1. This is an historic petition for Writ of Error Coram Nobis relief, following a false imprisonment, shameful destruction of a life-long of integrity and jealously-guarded "good name" in every honored sense of that word. In lieu of responding to the serious Constitutional and statutory excesses and abominations cited as having been committed by a wealthy and well-known Law Firm, we receive a trivializing request for a "Conference" (sic!). For shame!

2. What does such studied silence mean where any righteous person - especially Attorneys at Law duly licensed by the Sovereign - as a matter of law and of Equity must affirmatively respond! The New York Court of Appeals, in

People v. Jones, 44 N.Y.2d 76, at 81 states it well: "Consistent with legal principles recognized elsewhere in our jurisprudence it would seem that silence should give rise to legal consequences only if it may be concluded that the one who was silent was under an affirmative duty to speak (cf., e.g., 24 N.Y. Jur., Fraud and Deceit, §107,pp.160-161).

3. Such present "silence" in the face of the sworn, documented male fides the petitioner carefully recited in his moving papers herein, is clearly of the same stamp previously foisted on the Court: Merely submit an affidavit of blatant perjury. Merely "argue" orally. Submit a false pleading alleged served personally on the Lawfirm. Obtain a Criminal Conviction for Contempt of Court (sic!), absent an accusatory instrument, absent any sworn testimony, absent a jury trial, absent any of our historic and Constitutional Trial and Procedural and Substantive Safeguards. And thereafter, continue such

obscene stone-walling. Surely, this Court will not now permit such mockery of fundamental rights to be continued under its auspices! In lieu thereof, the Court will effectively now mandate a ruling which comports with decency, truth and justice. It need only apply the rule of law which holds that silence in the face of accusations, where not responded to, are deemed admitted as a matter of law!

4. The Court herein is even more compelled to exercise its Constitutional powers and responsibilities to rule on what is a truism of magnitude: Public humiliation without a Hearing mandates public exoneration. Without so much as a smidgen of opposition to the petition herein, surely it is incumbent upon this Court to grant the relief herein sought: Vacature of the "criminal contempt" conviction.

5. This Court cannot be indifferent to the inescapable fact that the Lawfirm of Feltman, Karesh, Major, Esqs., and not one member thereof has ever accepted this petitioner's challenge

testify under oath concerning the alleged basis for finding this Attorney at Law guilty of "criminal contempt of Court." That great, resourceful partner, to wit, Attorney Donald F. Schneider, who verbally lied to this Court shamelessly about this petitioner, as well as having committed multiple perjurious statements in his pleadings, has refused to testify under oath. Before this Justice. Before Justice Gammerman. Before Justices of the Appellate Division First Judicial Department. Before Justice Sandifer. Before Justice Sullivan. He has been able to publicly villify and shame the petitioner WITHOUT ONCE ACCEPTING THE CHALLENGES BY THIS PETITIONER FOR MORE THAN A YEAR, TO ACCEPT THE CHALLENGE OF TESTIMONY UNDER OATH TO SUPPORT HIS PERJURIOUS STATEMENTS AND WRITINGS HEREIN. For shame!

6. In lieu of legal responses this petitioner merely receives two letters. These communications decry my efforts to obtain the minimum rights I am entitled to as a citizen seeking relief in a Judicial Forum. And, as

attorneys, my opponents should have demanded that I be put to the test to receive just such Judicial relief.

7. Such letters fail to properly respond to my Motion pursuant to Section 440.10 Criminal Procedure Law. They are not entitled to any weight. A capsule showing of the Points duly raised reveals the paucity of such submissions - mere confessions and avoidance:

A. The Court did not have subject matter jurisdiction.

B. The Court did not have jurisdiction of the person.

C. The Order is jurisdictionally defective, insufficient on its face, substantially in violation of the law and the rights to Due Process and Equal Protection of the Laws.

D. A criminal contempt ruling without a hearing is a Constitutional nullity.

E. The Order of Justice Saxe on the same issue concerning the same party resulted in Double Jeopardy, Collateral Estoppel and Issue Preclusion all barring a second ruling herein.

F. No"proof beyond a reasonable doubt" was found or ruled upon in the "Criminal Contempt" finding.

G. No violation of a "Lawful" Court Order, pursuant to Judiciary Law Sec.750(A)(3)(4), was found or even posed.

H. Petitioner was held in "Criminal Contempt of Court without a scintila of factual support presented or produced.

I. Multiple fines were ordered paid to private attorneys in lieu of mandatory payment solely to the People or the Sovereign in such "criminal" contempt proceeding.

J. A Jury Trial should have been ordered as a matter of ministerial constitutional compulsion before conviction, sentencing, imprisonment could be achieved as herein.

K. No Constitutional or Statutory authority exists to have named private attorneys as sole prosecutors in this Criminal Conempt proceedings.

8. The above points of law found in this petitioner's motion papers herein are unchallenged. They are irrefutable.

9. The bottom line of this application is that your petitioner has been convicted and incarcerated without a hearing, without evidence, without an accusatory instrument, without Constitutional protections of any kind. The problems of these proceedings were compounded by the fraud, over-reaching, malpractice of George Sassower, Esq., who together with a former client Hyman Raffe, achieved my imprisonment while Raffe somehow escaped unscathed from his criminal contempt conviction. Feltman, Karesh, Major & Farbman have never been made to explain that "Great Escape" from Judicial Orders.

10. My raising these issues by this CPL §440.10 motion is the only avenue that remains to me in this effort to clear my name from a conviction that never should have been entered. The Constitution of the United States and the Constituition of the State of New York require this conviction be vacated.

11. Instructively, in the past weeks,

Donald F. Schneider audaciously moved to hold this petitioner in Criminal Contempt of Court three separate times: Before favored Justices and Jurists - Justice Gammerman, Referee Diamond and the Appellate Division of the First Judicial Department. Each such motion was duly denied!

12. Prior to that, for more than a year subsequent to his shameless, slippery obtainance of a "Criminal Contempt" Conviction absent every Due Process right accorded even the rapists, the murderers, the most obscene amongst us - every legal argument - every pleading in State and Federal Courts resulted in obscene allusions to this "criminal" (sic!). It was capped by a colleague appearing in the stead of Donald F. Schneider at a Special Term Part 1 Hearing most recently: He went about informing Justices, Law Clerks, Lawyers, mere pedestrians in the Courtroom corridors - "You cannot believe or trust this man (Sam Polur). He's nothing but a jailbird talking."

13. There has been nothing less than a perversion of magnitude of the Rules of Law by this LawFirm and this Attorney, Donald F. Schneider. Nothing less than Legal Extortion and Legal Blackmail has been purposefully advanced and sought. Truth and justice do not allow this.

WHEREFORE, petitioner respectfully urges this Court grant the relief sought herein, to wit, vacature of the Criminal Contempt Conviction - heretofore granted without sworn testimony, without an accusatory instrument, without cross-examination, without a charge or an opportunity to defend - and that it grant all other further and different relief it deems just and appropriate in the premises.

DATED: May 30, 1986.

s/

SAM POLUR
Petitioner Pro Se
391 East 149 Street,Suite 213
Bronx, New York 10455
(212) 402-6497

SUPREME COURT OF THE STATE OF NEW YORK
Individual Assignment Part 2

at the Courthouse thereof, 60 Centre Street,
New York, New York 10007

P R E S E N T :
Hon. ALVIN F. KLEIN
Justice

HYMAN RAFFE,

- against -

XAVIER RICCOBONO, et al.,

July 1, 1986

No. 78 on Calendar of 6/2/86

Notice of Motion — Papers Numbered 1-3

...
Filed Papers

Upon the foregoing papers this motion by Sam Polur, Esq. for an order pursuant to Criminal Procedure Law §440.10(1)(a)(b), (g), and (h) vacating the order of this court dated June 26, 1985 insofar as it relates to him is denied. The court has carefully reviewed all of the papers submitted herein, including the decision by the

Appellate Division and other courts in this matter, and finds that movant has failed to establish any grounds for the relief requested.

Dated: June 23, 1986

/s/ A.F.K.,
J.S.C.

County Clerk's Number: 9522/1985

January 31, 1987

To: Federal, State Judges who have been misled repetitively and without surcease based on false representations this past 15 months that George Sassower is representing the undersigned with respect to matters related to criminal contempt "finding" against myself, Sassower and one Raffe. Also to Attorneys.

From: Sam Polur, Attorney at Law

Subject: Unauthorized representation of myself by George Sassower, Esq., in cases I am no privy to, have not authorized, or generally been aware of until after the fact.

As you will readily note from the annexed letter to Hon. Robert J. Ward, Judge, Southern District of New York, at Foley Square dated January 27, 1987, I am incensed at the unrelenting placing of my name on pleadings I am not privy to until after-the-fact or not at all.

I believe this has been done to provide an added "protection" to Sassower by dragging my good name through Court after Court in an obscene "linkage" with himself. And making

EXHIBIT "C"

certain I am "revealed" as a "criminal contemnor." (sic!)

This is remitted to beg each of you to call a halt to these immoral and obscene practices by Sassower.

Respectfully submitted,

s/
Sam Polur

P.S. I have during the past 15 months mailed some 60 letters to Court and Counsel protesting Sassower's unauthorized use of my impeccable, honored name. Of course, my continued efforts to reverse this obscene "finding" - without <u>any</u> notice, hearing, testimony is a personal matter I intend to favorably resolve in good time. I am enclosing one illustrative - although lengthier than most - expression of anger at his wilful actions in this regard.

January 27, 1987

Hon. Robert J. Ward
United States District Judge
Foley Square
New York, New York 10007

Re: Hyman Raffe, GEORGE SASSOWER, and SAM POLUR, Petitioners, vs. THE STATE OF NEW YORK, Respondent [86 Civ. 9574 - RJW]

Dear Judge Ward:

At my recent appearance before you in the Robert McFadden criminal case, you were kind enough to inform me of the above-cited lawsuit and asked me what my status was therein. Herewith my response, delayed due to three days sickness due to the flu.

1. It is a total lie that I am a petitioner before you in the cited case.

2. It has proven impossible to stop Geroge Sassower, Esq. from adding my impeccable name to the within and similar lawsuits filed repetitively in both State and Federal forums.

3. I totally, unreservedly renounce this continued attempt to trade on my impeccable name and moral stature by Sassower, without surcease, placing my name in tandem with his in these aforesaid suits.

4. While it is true I was "found" (sic!) to

be in criminal contempt of Court by Justice Alvin F. Klein, along with Sassower and Raffe - my posture in the "case" was antithetical to each of the other two men. They had jointly and severally launched, what I now perceive to have been a quasi-criminal undertaking to avoid Raffe paying a loan "guarantee" vis-a-vis Puccini Clothes and one Kaufman. Instructively, I was never charged, never confronted, never accused, no hearing was held, no one testified under oath. The "finding" was ex parte after a "motion" argument at which I appeared as an Attorney.

5. Instructively, I was sentenced to - and served 30 days in prison - for allegedly "serving a summons" (sic!), which Sassower, about a year after I had been imprisoned, revealed in an affidavit had been served upon one Michael J. Gerstein and not Donald F. Schneider, each attorney bitterly engaged in legal battles-to-the-death with Sassower and Raffe.

6. I had merely been hired to represent Raffe, a multi-millionaire client of Sassower's for some twenty (20) years, at a trial where Sassower had been denied the right to be his Attorney. Raffe and Sassower, to the date of my imprisonment, had been

engaged in the lawsuits at issue for more than five years; myself for some six months.

7. Sassower had clearly "set me up" by certain deliberate actions on his part in the scenario which unfolded. He persisted in "representing" me (sic!) before varied State and Federal Courts WITHOUT MY KNOWLEDGE, ACQUISCENCE OR APPROVAL. This, and related Federal and State proceedings under current review, is a continuum of unauthorized filings in my name.

   This sick imposition of my good name has proceeded for more than a year. And has continued despite my remitting more than 60 letters, with copies to Sassower, to those Federal and State Jurists. I have informed him personally to stop.

8. In a December 29, 1986 submission of serious pleadings to the Appellate Division First Judicial Department, State of New York, Sassower has the brazeness to label me a petitioner - but as a "hostage!" There, too, it is a total lie to claim that I am a petitioner. Much less a "hostage" in an ephemeral sense, e.g., "hostage" to what? "Hostage" to whom?

9. Sassower, in his computermania spouts out a lot of bile - against multiple personages.

There is no restraint, no reasonable criticism. Even if "right" or morally "pure", what he has done - and is doing - incessantly, without informing me until after the fact or not at all - is identifying me with the salacious, dirty, vulgar diabribes of his own. That is assuredly his privilege where he is personally concerned. He has no authority whatsoever to drag me into his verbal cesspool. He has entrapped me. He has vilified me. He has stolen my good name without inhibition.

10. Inasmuch as no rational suasion has any perceivable impact on him, I shall take civil and criminal steps to stop this unremitting onslaught. Copies of this shall go to every Federal and State Judge and Justice who have received legal pleadings in this regard from Attorney Sassower.

Respectfully,

s/
Sam Polur

COPIES MAILED TO THE FOLLOWING
(Most of whom had received prior, letters of similar import)

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Hon. XAVIER C. RICCOBONO
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Hon. Judge WEINSTEIN, Chief Judge
United States District Court
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Chief JUDGE EDELSTEIN
United STates District Court
Southern District of New York
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New York, N.Y. 10007

CORPORATION COUNSEL OF CITY OF NEW YORK
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CLERK OF THE COURT
NEW YORK State Court of Appeals
Eagle Street
Albany, New York 12207

Clerk of the Court
United STates District Court
Southern District of New York
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Hon. David B. Saxe
Justice, Supreme Court State of New York
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Hon. THEODORE R. KUPFERMAN,
Justice, Appellate Division
First Judicial Department, N.Y.State
28th And Madison Streets
New York, N.Y. 10010

HON. FRANCES MURPHY, President Justice
1st Judicial Department, Appellate
Division, State Supreme Court
28th and Madison Streets
New York, N.Y. 10010

Hon. EUGENE NICKERSON, Judge
Eastern District New York
United States District Judge
Cadman Plaza Courthouse
Brooklyn, New York

No. 86-1209

Supreme Court, U.S.
FILED
MAR 20 1987
JOSEPH F. SPANIOL, JR.
CLERK

In the

SUPREME COURT OF THE UNITED STATES
October Term, 1986

SAM POLUR Petitioner,

against

THE STATE OF NEW YORK, HON.ALVIN F. KLEIN, Justice, Supreme Court State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, NEW YORK STATE SUPREME COURT

REPLY BRIEF

PETITION FOR A WRIT OF CERTIORARI

SAM POLUR, Esq.
Attorney Pro Se for
Petitioner
391 East 149 Street,Suit318
Bronx, New York 10455
(212) 402-6497

No. 86-1209

In the

SUPREME COURT OF THE UNITED STATES
October Term, 1986

SAM POLUR Petitioner,

against

THE STATE OF NEW YORK, HON. ALVIN F. KLEIN, Justice, Supreme Court State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVSION, FIRST JUDICIAL DEPARTMENT, NEW YORK STATE SUPREME COURT

REPLY BRIEF

PETITION FOR A WRIT OF CERTIORARI

SAM POLUR, Esq.
Attorney Pro Se for
Petitioner
391 East 149 Street,Suite318
Bronx, New York 10455
(212) 402-6497

REPLY BRIEF

The Memorandum Opposing Certiorari, duly submitted herein by the Attorney General of the State of New York, an Assistant Attorney General, the Solicitor General of the State of New York and the Deputy Solicitor General, fails to disclose submission to the Court of a second Error Coram Nobis, with affirmation dated December 1, 1986 and motion dated December 15, 1986. That, as virtually all prior pleadings of your petitioner was served upon the Attorney General, the District Attorney of New York County, Justice Alvin F. Klein. The motion to vacate judgment pursuant to Criminal Procedure Law ("CPL") Section 440.10 (1)(a)(g)(h) stressed lack of jurisdiction by the court of the action(and)of the person of the (defendant) (CPL §440.10(1a)); newly discovered evidence (CPL §440.10(1g)); that the judgment was obtained in violation of a right of the defendant under the constitution of the state and of the United States (CPL §440.10 (1h)).

There could be no subject matter juris-

diction absent initiation of a criminal contempt proceeding by way of an independent special proceeding pursuant to Article Four of the Civil Practice Law and Rules ("CPLR") of the State of New York. In personam jurisdiction never attached in that Sam Polur was never named a party to any action or proceeding; he merely argued a motion before Justice Klein opposing the seeking of an Order to find George Sassower, Esq., Sam Polur, Esq. and Hyman Raffe, their client, in criminal contempt. In lieu of setting the case down for a "hearing" under oath, the Court without an accusatory instrument, without any testimony whatsoever, without a scintilla of evidence or proof, without confrontation, without the opportunity to be heard under oath and subject to cross-examination, merely ex parte issued an order "finding" criminal contempt (sic), sentenced Sam Polur to thirty-day incarceration, saw him arrested and serve the full sentence imposed in the Bronx Mens House of Detention.

In his affirmation in support of the motion for Error Coram Nobis relief, petitioner stated in paragraph "B", page 3 of the exhibit herein, A-6: "B. I seek the relief herein based on newly discovered evidence of a most substantive nature." (emphasis added) That newly-discovered evidence was a communication of Attorney George Sassower dated October 22, 1986 with copies remitted to Mr. Justice Alvin F. Klein and to David S. Cook, Esq., Senior Assistant Attorney General of the State of New York, who had received on behalf of that Office, all the pleadings in the case affecting Sam Polur,Esq., himself and Mr. Hyman Raffe. Nowhere in the record is there a single denial of the facts therein stated. It is clear and persuasive that Sassower - Mr. Raffe's Attorney for some twenty (20) years, the sole legal Counsel to Mr. Raffe for some five (5) years before I was retained or even heard of the case which created the public blackening of my impeccable good name - provided not only Feltman, Karesh

Major & Farbman, Esqs. (formerly Feltman, Karesh & Major, Esqs.), as opposing Counsel, with all the pleadings, but the Office of the Attorney General of the State of New York, through David S. Cook, Senior Assistant Attorney General, was served with all the pleadings, appeared at virtually every hearing hereinbelow. Therefore, the disingenuous statement that solely, the "only party with full knowledge of the relevant facts and complete files" (sic!) are the private attorneys above cited - found in page "2" of the Memorandum Opposing Certiorari herein - palters with truth and reality. The Attorney General of the State of New York, while not a "party", was served with everything submitted to the Courts, purposefully and continuously.

The Memorandum Opposing Certiorari, instructively, contains strange lapses, incongruities and misstatements. Footnote "3" on page 9 accuses petitioner of omitting the June 23, 1986 order denying coram nobis relief. The truth is: It was merely omitted from the

Table of Contents. The June 23, 1986 order is found on page A-27 of petitioner's Appendix.

The statement that "This Court will not consider a federal question when it has not been raised, presented,and pursued in a timely and proper manner at the appropriate points in the state court proceedings," is true and known to petitioner. The annexed coram nobis petitions submitted to the New York State Supreme Court refute the inapposite and demonstrably-false, fanciful assertion on page "6" of the Memorandum Opposing Certiorari that "denial of coram nobis relief rested on an independent and adequate state procedural ground." (emphasis added) Even a cursory examination of the submitted petitions bely the bald, undocumented assertions found on pages 6 and 7, supra. The cases cited simply are not applicable to the facts and issues posited herein and hereinbelow. The bald, conclusory statements are nowhere "backed up" or demonstrated to have any validity in law, in equity, in fact or in truth.

The pronounced antipathy to George Sassower's personal and professional attributes "spilled over" to myself when I had vigorously asserted the rights to Due Process and fair play in the Courts with respect to Mr. Raffe. The Second Judicial Department for more than two years past had officially investigated the propriety of Mr. Sassower's actions as an Attorney at Law. Within the past two weeks, upon the findings and recommendations of the Grievance Committee of the Bar Association for the Second Judicial Department, the Appellate Division has Disbarred him from the practice of Law. He had been a practicing Attorney for some 36 years. It is worthy of note that I had been forced to write to many Justices in the First and Second Judicial Departments that I had at no time authorized Mr. Sassower to represent me; that he had repetitively placed my name on pleadings and documents as a party-plaintiff, inter alia, without my knowledge and consent. While I was incarcerated, he petitioned for a Writ

of Habeas Corpus before Justice Kupferman of the First Department Appellate Division of the Supreme Court. I KNEW NOTHING ABOUT SAID ORAL "PETITION", NO RECORD WAS EVER TRANSCRIBED OR CAN BE FOUND OF THE NATURE OR CONTEXT OF THOSE INFORMAL PROCEEDINGS THAT "DENIED" ME HABEAS CORPUS RELIEF! Many months later, I learned of multiple actions "on my behalf" - often with my name as "plaintiff" or "petitioner" - only after the fact. The Supplemental Exhibit herein contains one of my many mailings respecting this underhanded, dirty and opprobrious misuse of my name - unknown to me. The most recent necessity for sending such a letter resulted when Judge Robert J. Ward of the Southern District was kind enough to inform me of my "petition" to his Court together with that of Sassower.

The Attorney General's MEMORANDUM OPPOSING CERTIORARI states on pages 4-5 that "Virtually every issue raised on petitioner's coram nobis motion was determined on the merits (sic!) by the New York courts on his direct appeal." (my emphasis) On the contrary, that never occurred. There were mere affirmances without opinion. Multiple motions and appeals, as indicated, were unknown to me. Sassower had manipulated them to appear as though I was a participant. There were two or three occasions prior to my realization that Sassower

was uncontrollable, treacherous, dishonest - and endeavoring to pillory me by his clutch-embracing of me in order to give himself increasingly-required "credibility."

This Supreme Court will readily observe that there has never been so much as a denial that all I allegedly did was "serve a summons". None of the facts, none of the massive law, statutes, Constitutional principles and case-laws cited were rebutted or challenged.

The Attorney General of the State of New York, the Solicitor General of the State of New York and their respective top assistants in their Memorandum Opposing Certiorari simply ignore the "rightness" of the petitioner's case. They clearly have not read the classic admonition that they "may strike hard blows - but they must be fair blows." The classic language of Greene v. McElroy, 79 S.Ct.1400, 1413-1414 is presciently "on point" herein. These are principles which the State of New York, in this case, has not learned - or refuses to remember:

"Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the indiviudal so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right 'to be confronted with the witnesses against him.' This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, Mattox v. United States, 156 U.S. 237, 242-244, 15 S.Ct. 337, 339-340, 39 L.Ed. 409; ... In re Oliver, 333 U.S. 257, 273, 68 S.Ct.993, 999, 44 L.Ed. 1150; ... Nor, as it has been pointed out, has Congress

ignored these fundamental requirements in enacting regulatory legislation."(emphasis added)

5 Wigmore on Evidence (3d ed. 1940) §1367 was quoted, 79 S.Ct., at p.1414:

> "..The belief that no safeguard for testing the value of human statements is comparable to that furnished by cross-examination, and the conviction that no statement (unless by special exception) should be used as testimony until it has been probed and sublimated by that test, has found increasing strength in lengthening experience."

In the case at Bar, regrettably, the luminous language of the Court and the incisive critique of Professor Wigmore have been abjured by the State of New York and her Justices. For shame!

Conclusion

It is respectfully urged the Court grant Certiorari herein, together with all other further and different relief it deems just and appropriate.

March 18, 1987.

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